

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:

WASHINGTON EPISCOPAL
DAY SCHOOL, INC.

Applicant

Greg Fernebok
Max Kantzer
William Landfair
James Lansdale
Gregory J. Osband
Nicole White

For the Applicant

Jody S. Kline, Esquire
Attorney for the Applicant

Zoning Application No. G-873

Patricia Baptiste
Robert Cope
Jenny Sue Dunner
Jean Iker
Terry Radigan
Ralph Schofer
Susan Schumacher
Robert Shaffer
Jeffrey Slavin

Community Participants

Norman Knopf, Esquire
Attorney for the Citizens Coordinating
Committee for Friendship Heights
(representing some but not all of the
Individuals who testified)

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S SUPPLEMENTAL REPORT AND RECOMMENDATION

TABLE OF CONTENTS**Page No.**

| | |
|--|-----------|
| I. SUMMARY | 3 |
| II. STATEMENT OF THE CASE..... | 4 |
| III. FINDINGS OF FACT | 5 |
| A. Subject Property | 5 |
| B. Surrounding Area..... | 11 |
| C. Zoning and Land Use History | 13 |
| D. Proposed Development | 13 |
| E. Development Plan..... | 14 |
| F. Master Plan | 26 |
| G. Environmental Issues and Storm Water Management | 38 |
| H. Public Facilities | 39 |
| 1. Transportation | 40 |
| 2. Water and Sewer..... | 50 |
| 3. Schools..... | 50 |
| I. Community Participation | 51 |
| IV. SUMMARY OF HEARING | 52 |
| A. Applicant's Case in Chief | 52 |
| B. Community Participation | 63 |
| V. ZONING ISSUES | 72 |
| A. The Development Plan | 73 |
| B. Public Interest | 86 |
| VI. CONCLUSIONS..... | 87 |
| VII. RECOMMENDATION | 88 |

I. SUMMARY

The present application seeks to rezone an 11-acre site in Bethesda, located north of River Road, east of the Capital Crescent Trail and west of Little Falls Parkway, from the C-O (commercial, office building) and R-30 (multi-family) Zones to the PD-28 Zone (planned development). The site is currently split between the Washington Episcopal Day School, which is the property owner and Applicant in this case, and several light-industrial buildings. The school proposes to demolish the light-industrial buildings and their large parking lots, sell one acre of the property for development of an independent-living senior apartment building, improve the access road and landscaping, and eventually expand the school building and add new athletic and recreational facilities.

The Planning Board and Technical Staff recommended approval of the present application. The Hearing Examiner likewise recommends approval, finding that the evidence supports findings that the proposed development would substantially comply with the applicable sector plan, would be compatible with the surrounding area, would comply with the purpose and standards of the zone and would be in the public interest.

The present application benefited from significant community participation, all targeted at traffic issues. The principal concerns were congestion at and near the intersection of River Road and Little Falls Parkway, and cut-through traffic in nearby neighborhoods. In response to these concerns, the Applicant has committed on the submitted Development Plan to create a second drop-off/pick-up point, to improve site access and circulation, to use access controls to minimize cut-through traffic through the subject site, and to seek approval for and contribute financially to a traffic light at River Road and Landy Lane, the location of one of the two site entrances. The Hearing Examiner considers these commitments sufficient to permit a favorable decision on the application.

II. STATEMENT OF THE CASE

Application No. G-873, filed on July 16, 2007 by Applicant Washington Episcopal School, Inc., requests reclassification from the R-30 (multi-family residential) and C-O (commercial, office building) Zones to the PD-28 Zone (Planned Development, 28 units per acre) of 11.2 acres of land located at 5523 Landy Lane and 5600 Little Falls Parkway in Bethesda, Maryland, in the 7th Election District, on property identified as Lot N-103 (Parcel A, Little Falls Office Park) and Condominium Unit 1, River Road Land Condominium.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") who, in a report dated December 21, 2007 (the "Staff Report"), recommended *approval*. See Ex. 34. The Montgomery County Planning Board ("Planning Board") considered the application on January 3, 2008 and recommended *approval* by a vote of 5 to 0, on grounds that the proposed rezoning would be consistent with the purpose clause and applicable standards for the PD-28 Zone, would be compatible with existing and proposed uses in the surrounding area, and would conform to the recommendations of the applicable sector plan. See Ex. 36. MNCPPC's Community-Based Planning Division submitted a revised memorandum on January 2, 2008, recommending a change in one element of the Development Plan in response to a new community concern. See Ex. 34(a). Technical Staff submitted two supplemental email responses to questions from the Hearing Examiner on January 10, 2008. See Exs. 78 and 79.

A public hearing was convened by the Hearing Examiner on January 11, 2008, after proper notice, at which evidence and testimony were presented on behalf of the Applicant, and by community members who do not directly oppose the proposed rezoning, but are concerned about potential traffic impacts and believe that a traffic light at the corner of River Road and Landy Lane is imperative if the use of the subject site is to intensify. The record was held open for supplemental submissions by the Applicant and responsive comments by community members, and closed on January 25, 2008. The Hearing Examiner reopened the record on March 20, 2008, to request (1) a

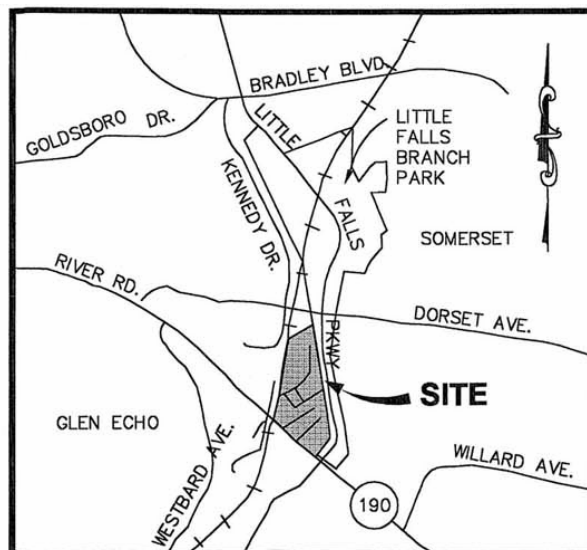
written analysis by MNCPPC Transportation Planning Staff of supplemental traffic data that the Applicant submitted after the hearing; and (2) additional information from the Applicant about the school's summer camp program. Supplemental submissions were made by the Applicant on March 17 and 20, 2008 and by Transportation Planning Staff on March 31 and April 1, 2008. The record close, after a public comment period, on April 17, 2008.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Any conflicts in the evidence are resolved under the preponderance of the evidence test.

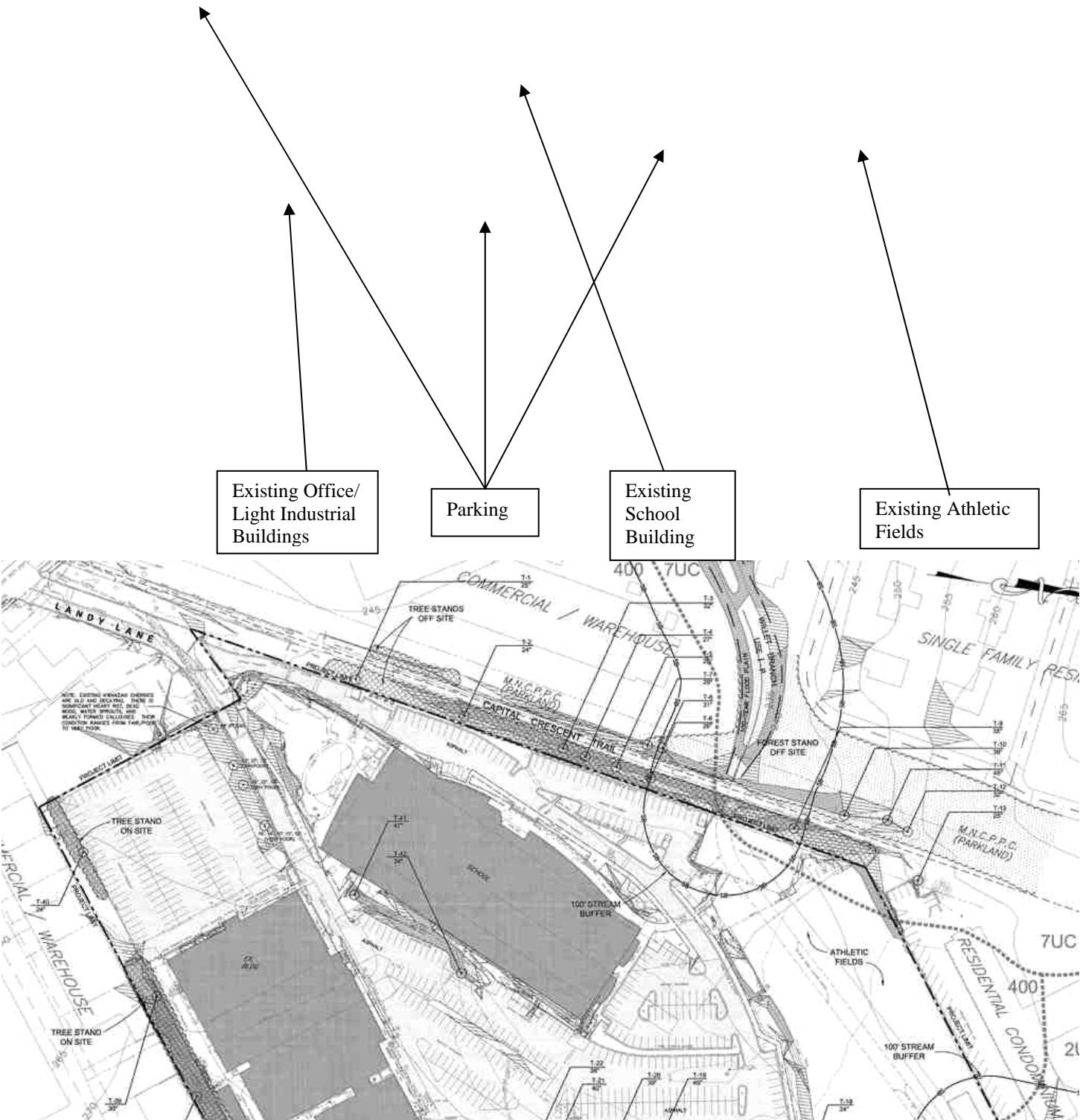
A. Subject Property

The subject property consists of approximately 11.2 acres of land located north of River Road, west of Little Falls Parkway and east of the Capital Crescent Trail (the "Trail") in Bethesda. The property is irregularly shaped, with approximately 960 feet of frontage along Little Falls Parkway, an 860-foot length along the Trail, and a 390-foot length along its northern property line. Vehicular access is available via a driveway entrance on Little Falls Road and via Landy Lane, a stub road that connects with River Road and terminates on the subject property. The general shape and location of the subject property are shown on the vicinity map below, excerpted from Ex. 92(a).



The northern and western portions of the property are developed with a large, three-story building that houses the Applicant, Washington Episcopal Day School (the "school"), a private educational institution with an enrollment of about 300 students in pre-school through eighth grade. The school has a large three-story building with associated surface parking, a playground, a grass athletic field and an all-purpose athletic court. The southern and eastern portions of the property are developed with four office/warehouse buildings varying from one to three stories in height, with extensive surface parking and loading areas. The existing site layout may be seen on the drawing below.

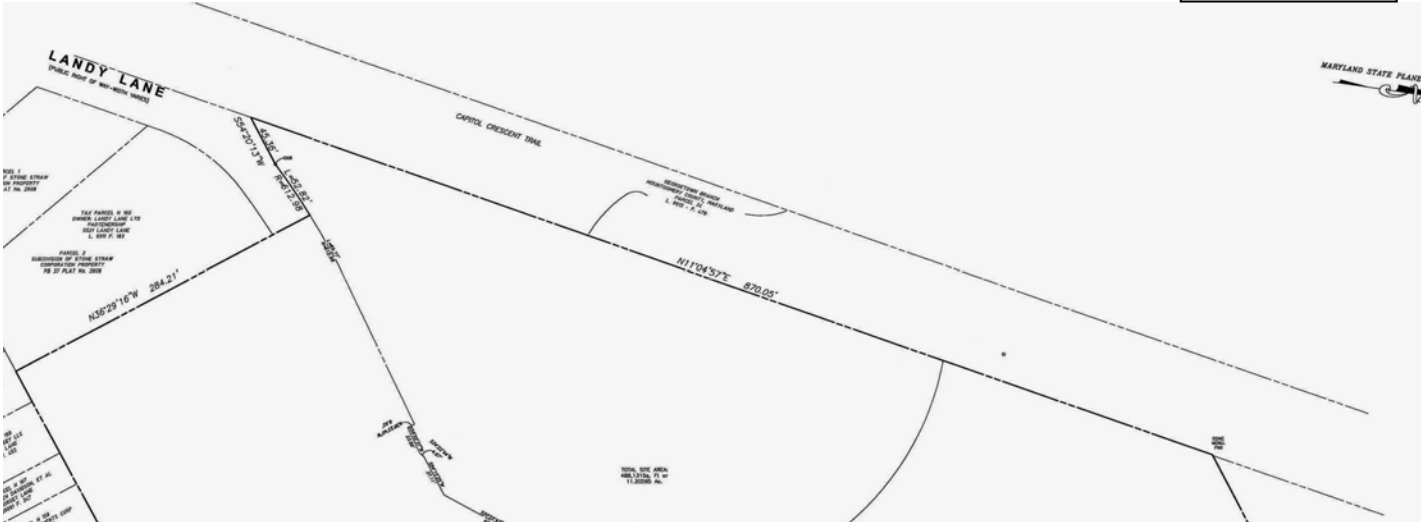
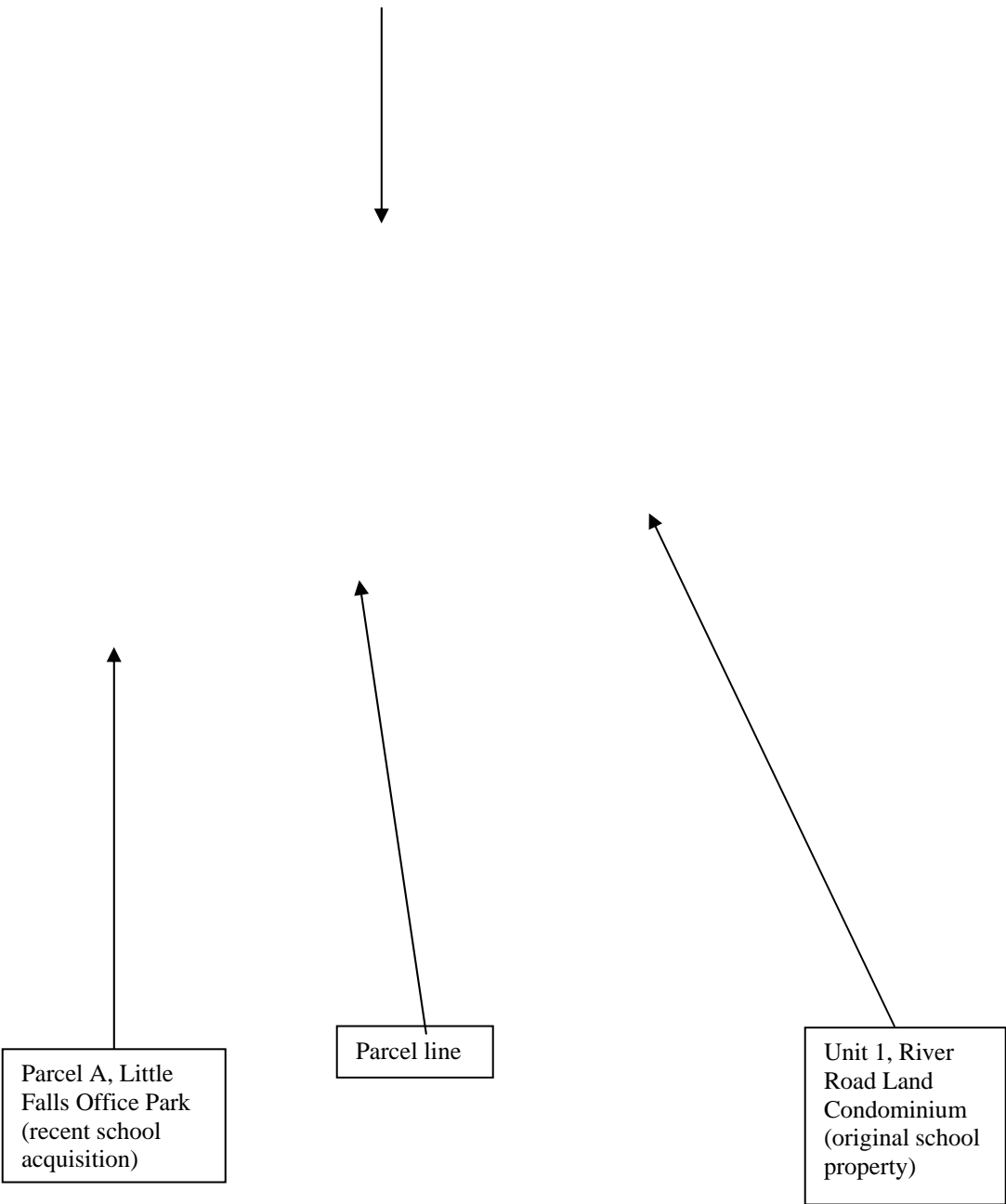
**Natural Resources Inventory/Forest Stand Delineation, Ex. 9
(graphics only)**



The subject property consists of two parcels. The northern and western portions of the property comprise Unit 1 in the River Road Land Condominium, with 5.9 acres of land. The southern and part of the eastern portion of the property comprise Parcel A in the Little Falls Office Park, containing 5.3 acres of land. These parcels are shown on the identification plat below.

Identification Plat, Ex. 6

Capital Crescent Trail



As may be seen on the zoning map below, the current zoning lines, which were applied by Sectional Map Amendment in 1983, do not follow the parcel lines.

Zoning Map Excerpt, from Ex. 5



The majority of the subject site is covered in impervious surface. The grass athletic field at the north end of the site is the only significant open space, and is bisected by easements accommodating sanitary sewer and storm drains. The site contains no areas of forest and very few large trees, and the topography generally slopes downward from the southeast corner of the site to the northwest corner.

B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

In the present case, Technical Staff described the surrounding area as bounded generally by Dorset Avenue to the north, Little Falls Park Stream Valley to the east, River Road to the south and Kennedy Drive to the west. The Applicant's land planner used the same surrounding area designation in his written report, although during the hearing, he agreed that the surrounding area could properly include homes on the far side of Little Falls Parkway, which can see the subject site during the winter and hear the sounds of children playing. Based on hearing testimony indicating that homes backing onto Little Falls Parkway and onto the Trail are within sound and, at least in the winter, sight of the subject property, the Hearing Examiner designates the surrounding area s bounded generally by Dorset Avenue to the north, properties abutting Little Falls Park Stream Valley to the east, River Road to the South and properties abutting the western edge of the Trail to the west. This area may be seen in the aerial photograph on the next page.

Aerial Photograph, Ex. 13



The surrounding area contains a mix of uses in a variety of zones, including offices, light industrial, retail, institutional, mid-rise and high-rise multi-family residential, and single-family detached residential. The subject property abuts the Trail to the west, a mid-rise, multi-family residential building in the R-10 Zone known as the Kenwood House to the north, Little Falls Stream Valley Park to the east, through which Little Falls Parkway runs in a north-south direction, and a series of light-industrial buildings in the I-1 Zone to the south. On the far side of Little Falls Stream Valley Park are single-family detached homes in the Town of Somerset, classified under the R-60 Zone. Between the subject property and River Road are light-industrial buildings, mostly in one-story

structures, including a banquet hall special exception fronting on Landy Lane, two gas stations in the C-4 (Limited Commercial) Zone, a bank building in the C-O Zone and a church in the R-60 Zone. South of these uses, at the junction of River Road and Little Falls Parkway, is the Kenwood House, a high-rise, multi-family condominium building in the R-10 Zone. The Trail at this location has a paved walking/bicycle trail and provides an important link to the Bethesda Central Business District further north. On the far side of the Capital Crescent Trail, most of the subject site faces the Westwood II Shopping Center in the C-4 Zone and office/warehouse uses in the I-1 Zone. The athletic field at the north end of the subject site sits across the Trail from single-family, detached homes in Kenwood. As seen on the aerial photograph that follows, beyond the surrounding area to the south are a great many industrial and commercial uses, and to the north, west and east are single-family detached neighborhoods.

C. Zoning and Land Use History

The subject property was classified under the I-2 Zone in the 1954 comprehensive zoning of the area. It was reclassified under the R-30 and C-O Zones by Sectional Map Amendment (G-368) in 1982.

The subject site formerly housed the regional headquarters for the Marriott Corporation, which moved to North Bethesda. The Washington Episcopal Day School was founded in 1987 and moved to the subject site in 1988, as a tenant in the existing main building. The school acquired the existing building and the surrounding six acres of land in 1996, and substantially renovated the building and grounds in 1999.

D. Proposed Development

In late 2004, the school learned that the adjacent five-acre parcel to the southeast, occupied by an office complex, was for sale. Having borrowed money for the initial acquisition and renovation of the subject site, the school had some difficulty borrowing again to buy the additional

property, but did so because its directors knew that the Sector Plan recommended significant density on the property, the development of which the school could not control if the land were in other hands. The school managed to buy the additional five acres, but is not in a position to continue financing the cost of that acquisition without getting some financial return on the property. Accordingly, the school proposes to rezone the entire 11-acre tract, sell one acre in the southwest corner as the site for a multi-family residential building, and reserve the remaining ten acres for school use.

The multi-family building is proposed as an age-restricted residence, limited to households with at least one person age 55 or older. The building would have a maximum of eight stories and 97 feet of height, and no more than 121 dwelling units. It is shown on the Development Plan in an L-shape, facing the school building to the north and a proposed new athletic field to the east. To the south and west, the multi-family building would face existing commercial and light-industrial buildings on neighboring properties.

The school's long-range plan includes a four-story addition to the existing three-story school building, for a total of 175,000 square feet of educational space; an additional athletic field; four tennis courts along the eastern edge of the property; and a new loop road to provide better vehicular circulation and more space for parents to line up during student drop-off and pick-up. (Currently, testimony indicates that most parents use the Little Falls Parkway entrance, and at school dismissal, the pick-up line extends onto Little Falls Parkway.) The Applicant also plans to install enhanced landscaping along the loop road and in parking areas, with the details to be worked out at site plan. With the exception of installing sidewalks and creating a second drop-off/pick-up point, which are part of Phase I of the development, implementation of the school-related improvements will depend on whether and when the school's capital campaign raises the necessary funds.

E. Development Plan

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is

classified under the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The principal component of the Development Plan in this case is a document entitled Development Plan, Exhibit 92(a), which is reproduced in full on page 16 below and at a larger scale on subsequent pages. Additional elements of the Development Plan include an aerial photograph of the area (Ex. 13)), a zoning map indicating the relationship between the subject site and neighboring zoning and land uses (Ex. 5), and the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD), Ex. 9.

Exhibit 92(a) satisfies the requirements of Code § 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of the proposed multi-family building by number of bedrooms, parking areas, an intended right-of-way dedication for Landy Lane, and areas intended for common use but not public ownership (athletic fields, sports courts and interior vehicular and pedestrian ways for walking, jogging or running).

The Development Plan proposes to demolish the existing office/warehouse buildings and a substantial amount of the existing surface parking areas. The existing school building in the middle of the site is to remain, to be expanded in the future with a four-story addition along its east side. The Development Plan shows a new loop road to serve both the school and the residential

building, and a reduced amount of surface parking laid out in multiple, smaller parking areas.¹ The eight-story multi-family building is shown in the southwest corner of the site, adjacent to the neighboring light industrial uses, with its parking underground. The Development Plan provides for a new cul de sac at the terminus of Landy Lane, in front of the multi-family building, providing an easy turnaround

The Development Plan contains a series of textual binding elements, many of which are the result of negotiations with community representatives and an agreement between the Applicant and the Citizens Coordinating Committee on Friendship Heights (the “CCC on Friendship Heights”). The CCC on Friendship Heights, which was represented by counsel in these proceedings, is an umbrella group representing about 12 citizens associations, including Kenwood, Kenwood Condominiums, Chevy Chase Village, Chevy Chase West, Westmoreland, Somerset, Green Acres, Glen Cove, Brookdale and Springfield.

The textual binding elements are summarized below and shown in full on pages 19 through 22.

- ◆ Residential use limited to independent seniors (at least one person per unit age 55 or older). Residential building limited to 121 dwelling units, including MPDUs, and a height of eight stories or 97 feet.
- ◆ Non-residential use limited to private educational institution for grades nursery through eighth grade. Total school building space limited to 175,000 square feet of space. Building addition limited to a height of four stories or 55 feet.
- ◆ Uses at north end of site limited to athletic field and accessory structures.
- ◆ Parking for all uses shall be on site.
- ◆ Accessory structures, including bleachers, limited to 15 feet in height.
- ◆ Locations of buildings, parking, athletic fields and other amenities will be as shown on Development Plan, with minor adjustments permitted.

¹ Testimony indicated that the Applicant intends to use the new tennis courts for overflow parking during special events such as graduation. The courts are planned to be built on existing pavement, providing a solid sub-surface, and to be surfaced with material that can withstand parking.

- ◆ Applicant will construct a cul de sac at the terminus of Landy Lane for public use, and, subject to County approval, a sidewalk along Landy Lane to River Road. Applicant will also build sidewalks as shown on the Development Plan, including to the right-of-way line for Little Falls parkway. Truck deliveries will be limited to the Landy Lane site entrance.
- ◆ Applicant will seek approval for a traffic light at River Road and Landy Lane, in coordination with the CCC on Friendship Heights, and will contribute to the cost of the light per an agreement between the Applicant and the CCC on Friendship Heights.
- ◆ Applicant will contribute to a facility supporting the Trail, to be determined at site plan.²
- ◆ Shared use agreement between the school and the owner of the multi-family building will provide for building residents to use school athletic fields and walkways. Building residents will also have access to school programs such as sporting events, recitals, lectures and charitable events.
- ◆ General locations for student pick-up and drop-off will be as shown on Development Plan, and traffic entering site shall not queue on public streets. Gates or other measures shall be used to limit cut-through traffic through the site other than for school functions.
- ◆ Green area shall be no less than 54% of lot area.
- ◆ Phase I will be development of multi-family building, extension of Landy Lane, installation of sidewalks and creating two drop-off/pick-up points. Simultaneous with construction of residential building, existing office buildings on site will be demolished and the underlying land stabilized with grass. This area may be used for recreational purposes as a lawn or improved as an athletic field (including a potential underground parking garage).
- ◆ Phase 2, to occur at one or more unspecified times in the future, includes improvements to the school as shown on the Development Plan.

The proposed site layout is shown in full on the next page and in more detail on the pages that follow.

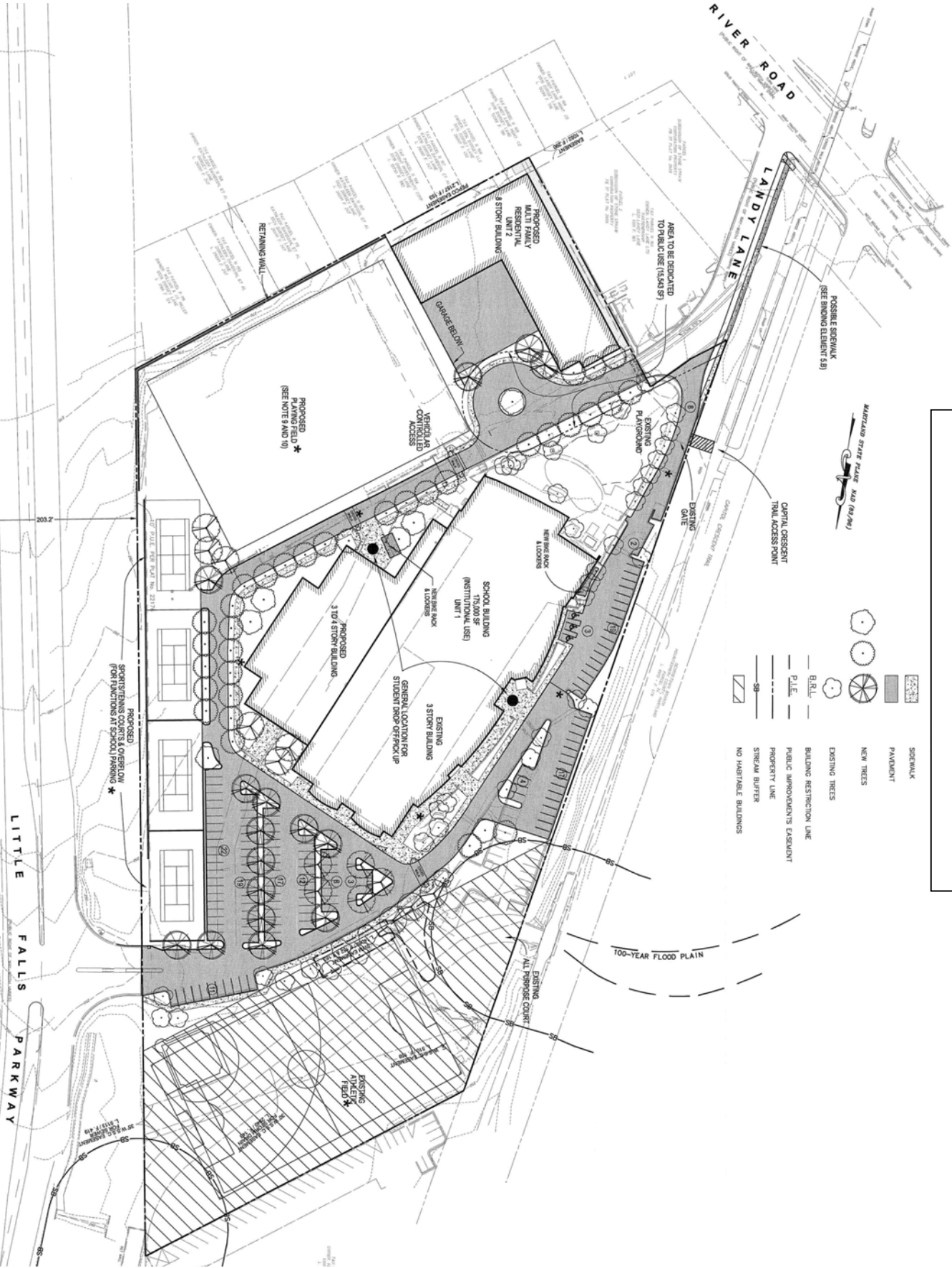
² The Development Plan presented to the Planning Board provided for eight parking spaces to be constructed by the Applicant adjacent to the Trail entrance. The Applicant made this proposal at the request of Technical Staff. The proposal was met with intense opposition from the Capital Crescent Trail Coalition, resulting in the submission of nearly 40 emails to MNCPPC. Following testimony from several speakers on behalf of the Coalition, the Planning Board recommended removing the eight parking spaces and adding a commitment, now shown on the Development Plan, to contribute to an unspecified facility supporting the Trail. See Ex. 36.

Development Plan, Ex. 92(a)

WASHINGTON EPISCOPAL DAY SCHOOL

DEVELOPMENT PLAN



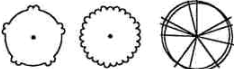










Development Plan Graphics, from Ex. 92(a)

Development Plan Legend, from Ex. 92(a)

LEGEND

| | |
|---|------------------------------|
|  | SIDEWALK |
|  | PAVEMENT |
|  | NEW TREES |
|  | EXISTING TREES |
|  | BUILDING RESTRICTION LINE |
|  | PUBLIC IMPROVEMENTS EASEMENT |
|  | PROPERTY LINE |
|  | STREAM BUFFER |
|  | NO HABITABLE BUILDINGS |


Development Standards Table from Development Plan, Ex. 92(a)

| DEVELOPMENT STANDARDS | PERMITTED/ REQUIRED | PROVIDED |
|---|------------------------|------------------------------------|
| <u>Area to be rezoned to PD-28</u> | | |
| Unit 1 | N/A | 5.94 acres |
| Parcel A | N/A | 5.27 acres |
| Total Tract | N/A | 11.21 acres |
| <u>Density</u> | | |
| Maximum Number of Dwelling Units | 353 | 121 |
| Maximum Residential Density (DU/Acre) | 28 | 11.16 |
| Multi-Family Residential Gross Floor Area | N/A | 170,000 SF |
| School Gross Floor Area | N/A | 175,000 SF |
| <u>Green Area</u> | | |
| Green Area | 236,313 SF | 272,237 SF * |
| Green Area Percentage of Net Tract Area | 50% | 57.6%* (See Binding Element No. 9) |
| <u>Building Setbacks</u> | | |
| School Building | | |
| From Capital Crescent Trail | N/A | 45 feet* |
| From Little Falls Parkway | N/A | 50 feet* |
| <u>Parking</u> | | |
| Residential | | |
| 1 bedroom | | |
| 35 units at 1.25 space/unit | | |
| 2 bedroom | | |
| 86 units at 1.50 space/unit | | |
| | 44 | |
| Total residential | | |
| School: 110 employees at 1 space/employee | 129 | |
| | 173 | 200 |
| | 110 | 137 (not including overflow) |

* Minor adjustments are permitted at site plan.

Textual Binding Elements from Development Plan, Ex. 92(a), page one of four



DEVELOPMENT PLAN TEXTUAL BINDING ELEMENTS

| DEVELOPMENT STANDARDS | PERMITTED/REQUIRED | PROPOSED |
|---|--|---|
| 1. LAND USE | | |
| A. Residential | No restrictions. | Independent seniors (at least one resident in each unit will be over the age of 55). |
| B. Non-residential | No restrictions. | Private Educational Institution for grades nursery through eighth grade. |
| C. Other | | In the area cross-hatched thusly  , no buildings other than accessory buildings and structures, such as storage sheds, gazebos, restrooms and bleachers shall be constructed, and the existing athletic field will be retained. |
| D. Parking | No restrictions. | Parking for all uses shall be on-site. |
| 2. DENSITY | | |
| A. Residential | 353 DU's (per Sector Plan, including MPDU's) | Not more than 121 dwelling units, including MPDU's. |
| B. Non-residential | No limitation by Zoning Ordinance (180,000 SF office space by Sector Plan) | 175,000 SF Institutional (PEI) |
| 3. BUILDING HEIGHT | | |
| A. Residential | No restrictions. | Eight (8) stories not to exceed 97 feet. |
| B. Non-Residential | No restrictions. | Proposed addition will be not more than four (4) stories not to exceed 55 feet. |
| C. Accessory Structures | No restrictions. | Any accessory building including bleachers, shall not exceed 15 feet in height. |
| 4. BUILDING AND PARKING SETBACKS | See Section 59-C-7.15 | Building, parking, playing fields and other amenity locations will be as shown on the Development Plan with minor adjustments permitted. |

Textual Binding Elements from Development Plan, Ex. 92(a), page two of four

| | | |
|--------------------------------|-----------------|---|
| 5. ACCESS | No restrictions | A. A cul-de-sac at the terminus of Landy Lane will be dedicated to public use. |
| | | |
| | | B. Along Landy Lane, from River Road to the School campus, subject to issuance of necessary permits from Montgomery County, Maryland, Applicant will install a sidewalk. |
| | | |
| | | C. Sidewalk to be installed by Applicant extending to the Little Falls Parkway right-of-way line. |
| | | |
| | | D. Other sidewalks to be installed as shown on the Development Plan. |
| | | |
| | | E. Truck deliveries will be limited solely to the River Road/Landy Lane ingress/egress |
| | | |
| | | F. Promptly upon approval of the requested rezoning, Applicant will request the State Highway Administration to install a traffic signal at the intersection of River Road and Landy Lane. Applicant will coordinate with the Citizens Coordinating Committee on Friendship Heights, Inc. ("CCCFH") and other interested parties to support the request for the traffic signal. Applicant will contribute to the cost of installation of the traffic signal in accordance with the terms of an agreement between Applicant and CCCFH. |
| | | |
| 6. COMMUNITY FACILITIES | None required | Applicant will contribute to a facility supporting the Capital Crescent Trail, the nature and extent of the contribution to be determined in cooperation with the Department of Parks and the Coalition for the Capital Crescent Trail at site plan. |
| | | |

Textual Binding Elements from Development Plan, Ex. 92(a), page three of four

| | | |
|--------------------------|-----------------------------------|---|
| 7. USE FACILITIES | Required in a planned development | A. Facilities designated on the Development Plan with an  (i.e., Playing Field, Sport/Tennis Courts, Athletic Field, and interior vehicular and pedestrian ways for walking, jogging or running) will be available for use by residents of the multi-family building along with students, faculty and administration of Washington Episcopal Day School (WES) under a shared use agreement between WES and the owner of the multi-family building. Use of these facilities will be supplemented by programmatic activities intended to integrate the residential and institutional uses (e.g., sporting events, recitals, lectures, charitable events such as school auctions, etc.) |
| | | B. Community use of school facilities for other than residents of multi-family building to be arranged with WES. |
| 8. CIRCULATION | No restrictions | A. No traffic entering the subject property will queue or stack up onto public streets. |
| | | B. General locations for student drop-off/pick-up shown by  |
| | | C. Gates or other control measures shall be employed with the goal of preventing, to the extent possible, the School's property being used for cut-through traffic (other than for school operations or school functions) between Landy Lane/River Road and Little Falls Parkway. |

Textual Binding Elements from Development Plan, Ex. 92(a), page four of four

| | | |
|----------------------|-----------------|--|
| 9. GREEN AREA | 50% | Green area shall not be less than 54% of lot area. |
| 10. PHASING | No restrictions | A. Phase I will be development of the multi-family residential building, extension of Landy Lane, installation of sidewalks and creation of two drop-off/pick-up points as shown on the Development Plan. |
| | | B. Phase II, to occur at one or more unspecified times in the future, includes improvements to the School as shown on the Development Plan. |
| | | C. Simultaneous with construction of the multi-family residential building, existing office buildings on the subject property will be demolished, the underlying land and will be stabilized with grass and the area may be used for recreational purposes either as a lawn or improved as an athletic field (including the potential of an underground parking garage). |

[this space intentionally left blank]

General Notes from Development Plan, Ex. 92(a)**GENERAL NOTES**

1. THE SUBJECT PROPERTY IS 11.21 ACRES AND IS COMPRISED OF UNIT 1 OF RIVER ROAD LAND CONDOMINIUM AND PARCEL A OF LITTLE FALLS OFFICE PARK AS SHOWN ON TAX MAP HM23 WITH TAX ACCOUNT NUMBERS 03155706 and 03374317 RESPECTIVELY.
2. PROPERTY INFORMATION SHOWN HEREON HAS BEEN TAKEN FROM PUBLIC RECORDS AND CAN BE FOUND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND ON PLAT No. 22176. AND PLAT No. 7163.
3. THE HORIZONTAL DATUM IS MARYLAND STATE PLANE NAD 83/96 AND IS BASED ON THE FOLLOWING NGS CONTROL STATIONS:

| <u>PID</u> | <u>DESIGNATION</u> |
|------------|------------------------------|
| DF9217 | DC WAAS 1 CORS ARP (ZDC1) |
| DH4144 | STERLING CORS ARP (LWX1) |
| AF9522 | GAITHERSBURG CORS ARP (GAIT) |

4. THE VERTICAL DATUM IS BASED ON NGVD 29.
5. THE SUBJECT PROPERTY IS CURRENTLY ZONED R-30 AND C-O.
6. THE SUBJECT PROPERTY IS WITHIN ZONE C (AREA OF MINIMAL FLOODING) AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR MONTGOMERY COUNTY, MARYLAND, COMMUNITY PANEL 0455D, DATED SEPTEMBER 29, 2006.
7. THE SUBJECT PROPERTY IS WITHIN THE LITTLE FALLS WATERSHED WHICH IS CLASSIFIED AS USE 1-P.
8. THE PROJECT WILL BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS AND IS IN WATER SERVICE CATEGORY W-1 AND SEWER SERVICE CATEGORY S-1.
9. PLAYING FIELD AND/OR ATHLETIC FIELD MAY BE CONSTRUCTED WITH SOD OR ARTIFICIAL SURFACE.
10. BELOW GRADE PARKING MAY BE ADDED BENEATH THE PLAYING FIELD.
11. AT THE TIME OF SITE PLAN REVIEW, APPLICANT WILL DEMONSTRATE HOW ROOF TOP MECHANICAL EQUIPMENT ON THE MULTI-FAMILY BUILDING WILL BE SCREENED FROM VIEWS, PARTICULARLY FROM THE KENWOOD CONDOMINIUM.

F. Master Plan

1. Key Sector Plan Provisions

The subject property is located within the area covered by the 1982 *Approved and Adopted Westbard Sector Plan* (the “Sector Plan”), which is shown on the vicinity map below.³

Westbard Sector Plan Area, from Sector Plan at 4



³ The Hearing Examiner hereby takes official notice of the full Sector Plan, excerpts from which were entered into the record before and after the hearing.

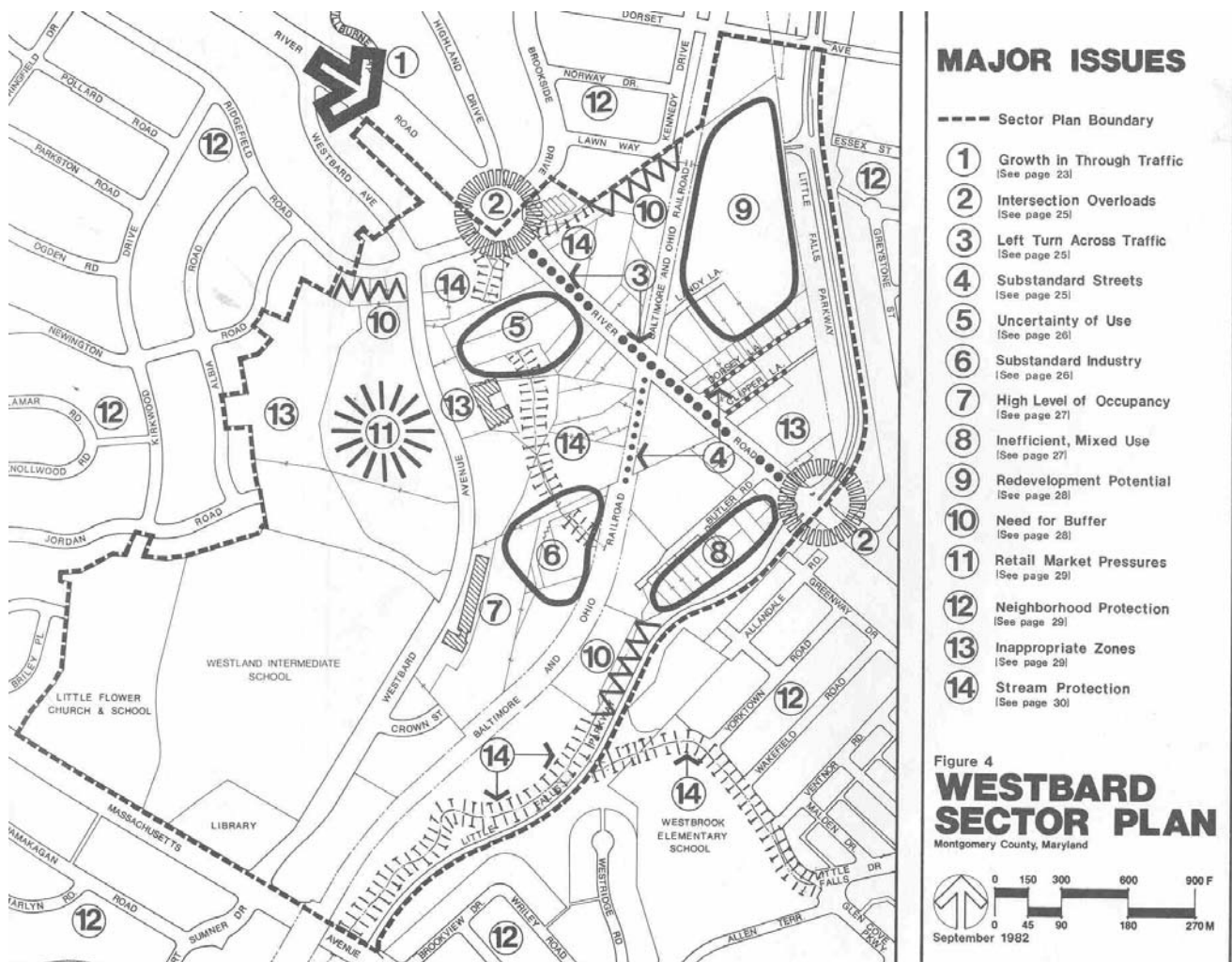
The main problem the Sector Plan sought to address was citizen concern about the potential for incompatible land use changes under the then-existing zoning, which was predominantly heavy-industrial. See Sector Plan at 2. Westbard, which was originally a commercial and industrial area surrounded by open space, had become (and remains) “a small island of industries and businesses surrounded by residential neighborhoods.” *Id.* at 32. The Sector Plan’s recommendations reflect a tension between trying to protect surrounding residential neighborhoods from the adverse impacts of commercial and industrial uses, and a desire to retain those business activities in the down-County area, both for convenience and to reduce vehicle-miles traveled between businesses and down-County customers. See Sector Plan at 21-22. There was also considerable discussion of the congestion problem on the section of River Road that passes through Westbard, which was caused by the same conditions that were identified in the hearing on this zoning application: a continuous series of driveways leading into individual businesses, a continuous center-turn lane accessible to traffic heading in both directions and therefore ripe for conflict, heavy through traffic and great difficulty in crossing for pedestrians. See Sector Plan at 14, 23-25. The Sector Plan identified several changes that could be made on River Road that would reduce congestion and help through traffic, but would make access to many of the local businesses less convenient. The Sector Plan concluded, based on comments from citizens and business people, that the better course of action was “to favor local needs and retain the midblock turn lane.” *Id.* at 25.

The Sector Plan started with a comprehensive planning approach to the area as a whole, in which it identified issues of concern and recommended proposals to address them. It then divided the planning area into geographical regions, considered alternatives, and made recommendations for each.

The subject property was specifically discussed in three parts of the plan. Under “General Concerns and Issues,” the plan noted that the subject site had been, until recently, the national headquarters of the Marriott Corporation, and that the former offices and storage building

were, in part, leased to various short-term tenants. See Sector Plan at 20. The Sector Plan anticipated that the property owner would demolish all or most of the buildings and redevelop the entire tract, but noted that the I-2 Zoning classification then applied to the property probably minimized the potential return on investment. Moreover, the plan noted that some uses permitted in the heavy-industry I-2 Zone would be inappropriate at this location, which is visible from both the Kenwood and the Somerset communities. See *id.* It noted as well that to the south, the site abutted existing light-industrial buildings in good condition, so any re-use of the property would have to “present an attractive appearance to the surrounding areas yet be able to fit in with the older, functioning light-industrial areas.” *Id.* A map identifying “Major Issues” is shown below.

Major Issues Map, from Sector Plan at 15



Under a “Design Concept” section that outlined general proposals to deal with the salient issues, the Sector Plan discussed the subject site’s redevelopment potential. See Sector Plan at 28. The discussion started by affirming that any new development must be compatible with surrounding uses and existing traffic constraints. It recommended that the north end of the property be converted to multi-family use with varying building heights, and that the south end should have office, laboratory or research uses to serve as a transition to the adjoining light-industrial uses. See *id.* The plan recommended achieving this through the PD Zone, with a density of 28 units per acre. This would allow up to 353 residential units, plus office/laboratory/research facilities and a small amount of convenience retail. The plan stated that the “purpose [was] to keep the impact of new development to approximately the same level as the former Marriott operations, with allowance for the offsetting effects of public transit and intersection improvements.” *Id.* The Sector Plan recommended that the PD Zone be applied with “conditions” on the non-residential uses to require trip-reduction measures, such as staggered work hours and employer-subsidized transit fares.⁴ Such conditions would not be necessary with the development proposed here, which would generate far fewer trips than the combination of uses and density envisioned in the Sector Plan. Finally, this section of the Sector Plan recommended that through travel by outsiders (people other than those working or living on the site) should be inhibited by the interior design and operation of the property, while allowing passage for emergency and service vehicles.

Finally, in its discussion of geographic sub-areas, the Sector Plan identified the subject site as Analysis Area B. The Sector Plan reviewed the property’s features, noting that many of the uses permitted in the heavy industry and light industry zones would not be compatible with the surroundings, particularly the Little Falls Park and nearby residential areas. See Sector Plan at 39. The Plan noted that floodplain constraints at the north end of the site direct development away from the adjacent residential uses, and that abutting uses were quite diverse: light-industrial, commercial,

⁴ A rezoning cannot, as a legal matter, be granted subject to conditions, although an applicant may offer to restrict the use or development of a property.

multi-family residential, single-family residential and a park. The Sector Plan observed that a single use for the entire site “could possibly affect, or be affected by, one of these neighbors in a negative way.” *Id.* It concluded that a combination of multi-family residential on the north part of the site and limited office uses on the south end “appear[s] to offer an acceptable combination.” *Id.* The Sector Plan recommended redevelopment of the subject site with residential structures between four and eight stories in height, located toward the middle of the area, with up to 353 dwelling units, including MPDUs. It also recommended up to 180,000 square feet of office space, including up to 10,000 square feet of retail, and noted that the “office component should be positioned so as to block off or deflect noise from existing industrial uses along Dorsey and Clipper Lanes.” *Id.*

The Sector Plan recognized that PD-28 is at the upper end of the PD density range, but noted that PD Zones with lower density levels call for a minimum percentage of townhouses, with the result that some of the remaining units can be accommodated only in high-rise buildings. The plan stated that the density level would be “compensated” by the recommendation for an eight-story limit on building heights. *See id.* The Sector Plan recommended applying C-O and R-30 zoning to the property by sectional map amendment, because leaving the I-2 zoning in place until a property owner decided to apply for the PD Zone was too risky. *Id.* at 39.

This section of the Sector Plan closed with the following paragraph (Sector Plan at 40):

The foregoing recommendations assume that no direct vehicular access should be provided through the site between the office use and the residential area, except for emergency vehicles. Analysis indicates that about one-third of the total vehicular trips estimated to be generated by the planned development would use the Little Falls Parkway access. The remaining two-thirds of the trips would use the River Road/Landy Lane access. In view of the problem of parking for the adjacent establishments on Dorsey Lane, staff suggests that those owners confer with the owner of the [subject property] for possible shared parking. If need be, a parking deck could be constructed.”

As a preliminary matter, the Hearing Examiner notes that the assumption in the first sentence of the paragraph would work against the purpose clause of the PD Zone, which calls for a high degree of

interconnectivity and integration among uses. The conflict inherent in this recommendation highlights one of the weaknesses of the PD Zone when applied to the redevelopment of in-fill sites.

The Applicant in the present case contends that the statements about use of the two access points being two-thirds River Road and one-third Little Falls Parkway were descriptive, but were not intended to be recommendations. See Ex. 94. Technical Staff and the CCC of Friendship Heights argue that these statements constitute a recommendation, and that the Applicant should be required to take the steps necessary to satisfy it. See Exs. 34(a), 93. On this point, the Hearing Examiner mostly agrees with the Applicant. The plain language of the statements is phrased in a declaratory manner, not in the language of a recommendation. The drafters of the Sector Plan used the term “recommendation” throughout the plan to identify recommendations; there is no reason to believe they would have phrased a recommendation in terms that left any doubt as to its function. The drafters clearly knew the difference between “[a]nalysis indicates” and “the Plan recommends,” and that difference should be acknowledged. Nevertheless, the Sector Plan’s density recommendations were predicated, in part, on an expectation that two-thirds of the site traffic would use the Landy Lane entrance, farther removed from the residential neighborhoods than the Little Falls Parkway entrance. The issue of trip distribution will be discussed further under Transportation, in Part III.H.

The Sector Plan also contained the general goals quoted below, which it described as the basis for its recommendations (Sector Plan at 35):

- ◆ Preserve and enhance the surrounding residential character and improve the quality of life for all residents.
- ◆ Protect multi-family residential structures and encourage additional multi-family development or conversion wherever little or no conflict with commercial and industrial uses will result.
- ◆ In view of the fact that all areas surrounding Westbard are committed either to stable single-family detached or townhouse uses, parkland, schools or churches, there should be no further expansion of the commercial/industrial activity center beyond the land now used or

zoned for those purposes, nor any merging with the Friendship Heights, Bradley Boulevard, or Bethesda commercial districts.

- ◆ Local commercial services in Westbard should be preserved and improved to increase their attractiveness, as well as their convenience and accessibility to the public.
- ◆ Industrial uses should be buffered to prevent adverse impacts on surrounding uses.
- ◆ Where new development is proposed, maximum use should be made of the natural environment, such as terrain and flora, to avoid mutual conflicts with abutting uses and this should be reinforced where necessary by additional landscape screening.
- ◆ Existing industrial uses which are suppliers to the region should be protected to minimize time and fuel costs, both for transporting supplies to County users, as well as for those traveling to the suppliers in Westbard.
- ◆ Areas zoned for heavy-industrial purposes should be eliminated.
- ◆ To the maximum extent possible, adverse impacts from heavy-industrial uses, such as noise, should be diminished.
- ◆ Avoid further degradation of the streams and, where possible, improve the water quality in Willett and Little Falls Branches.

2. Technical Staff's and Applicant's Analysis

Technical Staff found that the proposed Development Plan conforms to the Sector Plan because it requests the PD-28 zoning recommended in the plan, and would satisfy the development standards for the zone. See Ex. 34(a). Staff notes that the proposed development would be substantially less intensive to the community than what the Sector Plan recommended, given that the school is a less intensive use than redevelopment of the entire site. Technical Staff opined that the proposed development is not in compliance with the Plan's "recommendation" that two-thirds of site trips should use the River Road/Landy Lane access and the remainder should use Little Falls Parkway, but did not consider this grounds for denial. See *id.* The Hearing Examiner notes that site improvements and a potential traffic light, discussed further in Part III. H, may result in shifting more site traffic to Landy Lane.

The Applicant's land planner, William Landfair, opined that the proposed development would be consistent with the Sector Plan. He stated that it would promote the plan's general goals by removing substantial impervious area and replacing it with green space benefiting the school community, residents of the proposed multi-family building and the surrounding area, and by improving stormwater management for the property. See Ex. 32(a) at 5-6. Mr. Landfair stated that the Applicant's proposal improves upon the Sector Plan's recommendations by creating less overall square footage, fewer dwelling units and less overall intensity on the site. He noted that as an alternative to commercial uses, which generate a substantial amount of traffic, the Applicant has proposed to limit the non-residential development to a maximum school build-out of 175,000 square feet. Mr. Landfair identified the reduced parking demand of a school as a significant benefit, allowing a substantial amount of green space to be retained on site in the form of two full-sized athletic fields, four tennis courts, an all-purpose sports court and a playground. He noted that limiting the residential component to a small area of the site enhances the opportunities for green space. Mr. Landfair opined that in this case, the PD Zone would provide a means of achieving the Sector Plan's vision by providing the design flexibility necessary to create appropriate internal site relationships, parking strategies and setbacks to integrate the two uses proposed. See Tr. at 85.

3. Hearing Examiner's Analysis

In this case, the District Council must consider Sector Plan compliance in two contexts. Section 59-D-1.61 requires that approval of the Development Plan be accompanied by a finding that the "zone applied for substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies." Pursuant to Section 59-C-7.11, it is the purpose of the PD zone "to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. . . . it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent

county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.” The purpose clause for the PD Zone also states that this zone “is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans.” Code § 59-C-7.11. Thus, the required development plan findings call for a finding of “substantial compliance” with the use and density indicated by the Sector Plan, while the purpose clause for the zone calls for broader findings that the proposed development would be in substantial compliance with the Sector Plan as a whole, and would implement the Sector Plan more closely than may be possible under other zoning categories.

The development proposed in this case is consistent with some elements of the Sector Plan and inconsistent with others. The question before the District Council is whether the consistencies constitute “substantial compliance,” or whether the inconsistencies result in a development plan that fails to comply with the essential elements of the Sector Plan.⁵ In making this analysis, the Hearing Examiner is mindful that the sector plan before us is 26 years old – many years beyond the 10-year period after which a master or sector plan is generally expected to be updated. See “Note to Readers,” Bethesda-Chevy Chase Master Plan. While this does not diminish the requirement for substantial compliance with the Sector Plan, it does suggest, as noted in standard language at the beginning of all Montgomery County master and sector plans, that it would be appropriate to place more weight on the Sector Plan’s more general recommendations than on very specific recommendations which, by their nature, are more likely to become out-dated.

The Sector Plan’s first and most general discussion of the subject property was in the “General Concerns and Issues” section, where the Sector Plan noted that the subject property is visible from Kenwood and Somerset and yet is adjacent to light-industrial uses. Based on those

⁵ Black’s Law Dictionary, a widely used source among lawyers, defines “substantial compliance” as “compliance with the essential elements.” Black’s Law Dictionary, Fifth Edition.

features, which are still present today, the Sector Plan recommended that redevelopment of the subject property should “present an attractive appearance to the surrounding area yet be able to fit in with the older, functioning light-industrial area.” Sector Plan at 20. The Development Plan proposed here would satisfy this recommendation. The site can be expected to have an attractive appearance with the demolition of existing light-industrial buildings and extensive surface parking, to be replaced with a new multi-family building, a large playing field, a modest amount of surface parking (approximately 137 spaces) distributed in several locations on site, new landscaping and, at some point, a new school addition. The school and the new multi-family building are types of uses that can be expected to maintain an attractive appearance, and to operate without noticeable adverse impacts on the surrounding area. Moreover, testimony from Mr. Landfair and from a representative of the developer who intends to construct the multi-family building suggests that multi-family apartment buildings are located adjacent to or within a short distance of commercial and light-industrial buildings with some frequency.

The developer’s representative explained that units in the building proposed here would be priced differently depending on what floor they are on and whether they face the school field or the adjacent industrial uses. He pointed out other multi-family high-rise buildings in the immediate area that have close views of industrial areas, as well as a new building his company recently completed at the corner of Bradley Boulevard and Wisconsin Avenue, about three-quarters of a mile from the subject site, which is about 15 feet from a commercial office building. The Development Plan shows little space to buffer the view of the industrial buildings, but the less desirable views may provide opportunities for lower-priced housing on the bottom floors of the building.

The Sector Plan’s more specific recommendations for the subject site include making sure that new development is compatible with the diverse uses in the surrounding area and with existing traffic constraints. See Sector Plan at 28. To achieve this, the plan identified multi-family residential buildings in the middle of the site and limited office uses on the south end as “an

acceptable combination.” See *id.* at 28, 39. There is no indication in the Plan that this recommendation was based on a strong need for either multi-family residential space or office space. Rather, these appear to be uses that the planners viewed as useful and compatible possibilities. The looseness of the references to office use is underscored by the plan’s reference, in some places, to “office/laboratory/research facilities.” In the Hearing Examiner’s view, the proposed combination of a multi-family building and a private school would serve at least as well in providing uses that would be useful and compatible. The proposed combination would provide additional housing, a school that may be attended by some area children and contribute to the local economy, and lower levels of parking and traffic than the uses identified in the Sector Plan.

The Sector Plan recommended density limits – up to 353 dwelling units and 180,000 square feet of office space – that were commensurate with the PD-28 Zone. The language of the plan implies that a lower density PD Zone might have been preferred, but was not used because it would have required a certain percentage of townhouses. Instead, the planners recommended a PD density that permits all multi-family buildings, but recommended an eight-story limit on building heights to counterbalance the relatively high number of dwelling units permitted. See Sector Plan at 39. The plan expressed concern about the traffic impacts of this level of development, recommending that PD zoning be granted subject to “conditions” requiring trip-reduction measures, such as staggered work hours and employer-subsidized transit fares. Thus, it appears that the maximum density levels recommended in the Sector Plan were not goals in and of themselves, but rather were a means of attaining a compatible use of the site. The Applicant here has proposed a maximum amount of school space equivalent to the amount of office space the Sector Plan recommended, and slightly more than one-third the number of residential units. While this does not represent full compliance with these detailed recommendations, in the context of the overall set of goals and recommendations described in the Sector Plan, the Hearing Examiner finds that a reduced level of residential density is not fatal to this application.

The Sector Plan also recommended specific locations and building height limits for the two uses: multi-family uses in the middle of the site, between four and eight stories in height, and office uses at the southern end of the site, serving as a transition to the neighboring light-industrial uses and “positioned so as to block off or deflect noise from existing industrial uses.” Sector Plan at 39. The multi-family building now proposed for the site would serve as a transition between the surrounding single-family neighborhoods and the light-industrial uses, and would block or deflect at least some of the noise. The existing school building would remain in the middle of the site and would expand to a maximum of four stories, in keeping with the minimum height limit the Sector Plan envisioned. While the middle of the site might have provided all units in the multi-family building with equally attractive views, having the school at that location instead would have no adverse impact on the surrounding area, and the location proposed for the multi-family building would add a different element to the housing offerings in the vicinity.

The Sector Plan assumed that no direct vehicular access should be provided between the residential and office uses, except for emergency vehicles. As noted earlier, such an arrangement would be inconsistent with the purpose clause of the PD Zone. The intention of stating this assumption may have been to support a recommendation that through-travel by outsiders should be inhibited by the interior design and operation. The present Development Plan satisfies this recommendation by memorializing the Applicant’s intention to use gates or other measures to prevent, as much as possible, the school from being used for cut-through traffic unrelated to school functions.

The proposed development would also promote the Sector Plan’s general goals of preserving the residential character of surrounding neighborhoods, encouraging additional multi-family development and, through improved stormwater management, avoiding further water quality degradation in Willet Branch.

For all of the above reasons and based on a preponderance of the evidence, the Hearing Examiner concludes that the development proposed on the submitted Development Plan

would substantially comply with the goals and recommendations of the Sector Plan by satisfying its essential elements: a redevelopment that is compatible with diverse uses in the surrounding area, presents an attractive appearance while fitting in with adjacent and light-industrial uses, is unlikely to worsen traffic constraints and will provide a transition to the light-industrial uses.

G. Environmental Issues and Storm Water Management

MNCPPC Environmental Planning Staff recommend approval of the requested rezoning, noting that the subject site is located in a highly urban area that was developed before the County's Forest Conservation Law and Environmental Guidelines were adopted. See Staff Report at 10. With the proposed redevelopment, the site would be required to come into compliance with both the law and the guidelines. Staff notes that the Preliminary Forest Conservation Plan satisfies applicable requirements. It provides for the required 1.58 acres of afforestation through on-site forest planting (0.66 acres) and canopy credit for landscaping. There are some tree stands and individual trees on site, but nothing that qualifies as forest. The Applicant's landscape architect, Gregory Osband, noted that there is forest adjacent to the site in the rights-of-way for Little Falls Parkway and the Trail, and that the Applicant would take steps to protect the larger trees that are right up against the subject site. He added that the proposed development would benefit nearby forest by removing a heavy bamboo stand that is starting to creep into the forest.

Mr. Osband stated that removing a significant amount of impervious area, which would increase run-off infiltration and decrease surface run-off, would be one of the project's environmental benefits. The majority of the stream buffer area is currently paved, covered with parking lots and a basketball court, and all of that paving would be removed with the proposed plan. Also, the Applicant plans additional forest plantings adjacent to Little Falls Parkway and in a small area next to the proposed athletic field. In addition, the tennis courts are planned to be located back from the edge of the site and stepped down in grade, to keep them on existing pavement, make them level and protect specimen trees growing very close to the edge of the property.

The subject site is not located in a special protection area or primary management area, and contains no steep slopes or wetlands. Willett Branch, a tributary of Little Falls, originates east of the subject site and runs through a concrete channel under the subject site. The flood plain for this stream runs through the subject site, and the Development Plan provides for stream buffers per the County's Environmental Guidelines. The Applicant's civil engineer, Max Kantzer, testified that due to lack of space for open stormwater management facilities on the site, the stormwater management facilities would be primarily underground, with a combination of storm filter and underground vaults. He stated that the plans also include expanding an existing surface bio-retention facility at the north end of the site, near the existing athletic field. He noted that the site currently has very little stormwater management, so the proposed development would bring a significant improvement in that area. Mr. Kantzer stated that the Applicant is not currently requesting waivers of any stormwater management requirements, and has submitted a concept plan to DPS but had not received any comments at the time of the hearing. Mr. Kantzer described the stormwater management plan for the subject site as fairly straightforward, because options are limited. He acknowledged that some changes may be made, potentially including the use of some green roofs, but he is very confident that there is at least one workable solution that can meet all the requirements.

Technical Staff did not provide any input on stormwater management, stating that MNCPPC does not have the expertise or authority to determine whether stormwater management concepts are workable or whether the plan can or is likely to be approved. See Ex. 78. Staff noted that stormwater management facilities are shown in areas that have been previously developed, so they would not disrupt tree roots, intrude into stream valley buffers or require forest removal.

H. Public Facilities

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed

development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets biennially in the Growth Policy.⁶ While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review, and the fact that the Council's review is much broader at the zoning stage than what is available to the Planning Board at subdivision, a process designed to more intensively examine the "nuts and bolts" of a development. The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Pursuant to Zoning Text Amendment 07-17, enacted on February 26, 2008, the present application will be evaluated under the Growth Policy in effect when the application was filed, the 2003-2005 AGP Policy Element.⁷ Under that policy element, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").⁸ The Planning Board

⁶ See *2007-2009 Growth Policy, Resolution No. 16-376*, adopted November 13, 2007.

⁷ The Hearing Examiner hereby takes official notice of Zoning Text Amendment ("ZTA") 07-17. The Applicant's traffic expert testified at the hearing that the proposed development would also be able to satisfy the mitigation requirements of Policy Area Mobility Review under the 2007-2009 Growth Policy, using one or more of the methods outlined in the Growth Policy. See Tr. at 174. The applicable critical lane volume standard (for the Bethesda/Chevy Chase Policy area) was not changed in the 2007-2009 Growth Policy. See 2007-2009 Growth Policy at 12.

⁸ See *2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375*, adopted October 28, 2003; Local Area Transportation Review Guidelines Approved and Adopted July 2004 ("2004 LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element and the 2004 LATR Guidelines.

recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.). A traffic study must take into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt ("background" traffic), and trips expected to be generated by the proposed development.

The Applicant performed a traffic study as required in this case. Technical Staff directed the Applicant to study the effects of the proposed development on the critical lane volume ("CLV") at four nearby intersections, all on Little Falls Parkway: River Road, Dorset Avenue, Hillandale Road and Massachusetts Avenue. Technical Staff identified no background traffic to be applied in this case.

The traffic study found that each of the four intersections currently operates with a CLV below the applicable 1600-CLV congestion standard for the Bethesda-Chevy Chase policy area. Traffic generation for the school expansion was estimated using trip generation rates in the LATR Guidelines for private schools, K-8, during the morning peak hour. For the afternoon peak hour, the traffic study used a trip generation rate from the Institute for Transportation Engineers, a nationally recognized entity. The Applicant's traffic expert at the hearing clearly had limited familiarity with the details of her firm's traffic study, but she suggested that the reason for the two different trip generation rates was because the school's afternoon peak traffic occurs at approximately 3:30 p.m., before the afternoon peak period as defined under LATR begins. (School is generally dismissed at 3:25, although there are after-school activities and after-care for some students.)

A traffic expert who testified on behalf of the CCC of Friendship Heights, Ralph Schofer, opined that the estimate in the traffic report that 300 additional students would generate 127

trips out of the site during the morning peak hour is unreasonable. See Tr. at 234-35. He noted that number would mean an average of 2.3 children per car, which he described as desirable but rarely attainable. When asked during the hearing why her firm had not used actual driveway counts to estimate the number of trips the school expansion would generate, Ms. White stated that they used the rates provided in the LATR Guidelines based on an expectation that Technical Staff would prefer that approach. She added that her firm had conducted actual traffic counts at the school entrances in April, 2007, and while she did not have a recollection of the exact numbers, she believed the actual counts were comparable to the projections. See Tr. at 162. The Applicant submitted the April, 2007 counts after the hearing, and they turned out to be significantly higher than the projections in the traffic study.

The April 2007 counts suggested that the current 300-student enrollment generates 205 trips out of the site during the morning peak hour, considerably more than the 127 estimated for an additional 300 students. See Ex. 92(b). It should be noted that 56 of the 205 trips were actually counted leaving Landy Lane at River Road, not leaving the site, so some of them may have come from land uses on Landy Lane other than the school. See Ex. 92(b). Taking into account both trips in and trips out, the April 2007 counts showed a total of 474 trips in the morning peak hour, while the projected number is 276 total trips. A similar disparity can be seen in the afternoon rates: the April 2007 counts show 137 trips into the site and 83 trips out during the peak hour for afternoon street traffic,⁹ for a total of 220 trips, while the traffic study estimated that an additional 300 students would generate only 22 trips into the site and 29 trips out during the afternoon peak hour, for a total of 51. See Ex. 92(b); Ex. 76(b) at 9.

In light of the traffic counts provided after the hearing, Ms. White's testimony that the actual counts were comparable to the projections now seems sadly misinformed. Due to the significant disparity in the numbers, and the possibility that higher trip projections could result in CLV's

⁹ Again, the 83 trips were actually leaving Landy Lane, so some may not have come from the school. See Ex. 92(b).

above the policy area threshold, requiring the Applicant to fund traffic mitigation measures, the Hearing Examiner reopened the record and asked MNCPPC Transportation Planning Staff to provide an analysis of the data that had been submitted regarding the April 2007 accounts. Transportation Planning Staff requested that the Applicant find a way to obtain a more accurate account of existing school trip generation by separating out trips that are not school-related. See Ex. 100(a) at 1-2. To accomplish this, the Applicant's traffic consultant conducted additional traffic counts on Friday, March 14, 2008 and on Monday, March 17, 2008, a day when the school was closed for spring break. The Applicant then reduced the April 2007 counts to account for non-school traffic. The Applicant did not submit the 2008 counts into the record, so it is not possible for the Hearing Examiner to assess the accuracy of these calculations. According to Technical Staff, however, the Applicant simply reduced the April 2007 counts by the number of trips that were counted on March 17, 2008, when school was not in session. See Ex. 102.

At the school's Little Falls Parkway driveway, the Applicant applied a non-school trip reduction of 57 trips, or 17 percent, during the morning peak hour, and 20 trips, or 14 percent, during the afternoon street peak hour.¹⁰ See Ex. 100(a) at 2; Ex. 102. The non-school trips at this driveway represent traffic to and from the office/light-industrial buildings on the subject site, which are still partially occupied. See Ex. 102. At the school's Landy Lane driveway, the Applicant applied a non-school trip reduction of 62 trips, or 44 percent, during the morning peak hour, and 44 trips, or 55 percent, during the afternoon street peak hour.¹⁰ See Ex. 100(a) at 2. At this driveway, the non-school trips represent traffic to and from the existing gas station and other businesses on Landy Lane. These percentages are high, but they are supported by the testimony of two community members who conducted informal traffic counts at the intersection of Landy Lane and River Road and found that even during the school's afternoon pick-up period, many of the vehicles exiting that part of Landy Lane were not carrying any children, suggesting that they had not come from the school.

¹⁰ The Hearing Examiner calculated the percentages from a table provided in the Applicant's March 19, 2008 Traffic Study Amendment. See Ex. 100(a) at 2.

Applying these trip reductions to the April 2007 traffic counts, the Applicant's traffic consultant estimated that the existing school generates 355 trips (in and out) during the morning peak hour and 156 trips (in and out) during the afternoon street peak hour. See Ex. 100(a) at 2. Dividing these numbers by 300, the resulting trip generation rate per student is 1.18 during the morning peak hour and 1.01 during the afternoon street peak hour. See *id.* These trip generation rates are higher than the rates that were previously used, particularly for the afternoon peak hour: the previous rates were 0.92 during the morning peak hour, based on LATR, and 0.17 during the afternoon street peak hour, based on the ITE. See *id.* Applying the new trip generation rates to the proposed increase of 300 students, the Applicant provided the following comparison of trip generation shown in the October 2007 traffic study and revised estimates:

**Table 2, Washington Episcopal School Projected Future Trips
From March 19, 2008 Traffic Study Amendment, Ex. 100(a)**

| | October 2007 Traffic Study | | Revised Traffic Study | |
|---|----------------------------|---------|-----------------------|---------|
| | AM Peak | PM Peak | AM Peak | PM Peak |
| Massachusetts Avenue/Little Falls Parkway | 1207 | 980 | 1215 | 981 |
| River Road/Little Falls Parkway | 1520 | 1595 | 1528 | 1588 |
| Dorset Avenue/Little Falls Parkway | 700 | 693 | 748 | 727 |
| Hillandale Road/Little Falls Parkway | 710 | 656 | 758 | 686 |

Once trip generation numbers have been estimated, the next step is to develop assumptions for how the trips would be distributed on the local roadways, and which intersections the trips would go through. In the March 2008 Traffic Study Amendment, the Applicant's traffic expert distributed the trips based on the existing school trip distribution pattern, rather than the trip distribution pattern prescribed in the LATR Guidelines. This resulted in a much lower percentage of school traffic projected to go through the intersection of River Road and Little Falls Parkway – about 20 percent compared to about 40 percent under the LATR distribution – which is the only one of the studied intersections where the CLV approaches the congestion standard. See Ex. 100(a) at 4. Correspondingly higher percentages of school traffic are projected to go through other Little Falls

intersections.¹¹ See *id.* Combining the higher trip generation numbers with the new trip distribution rates, the Applicant concluded that CLV at all of the studied intersections would remain below the applicable congestion standard with the proposed development. See Ex. 100(a) at 5. This methodology and conclusion were supported by MNCPPC Transportation Planning Staff, who observed that with future school trip distribution based on the existing school traffic pattern, CLVs at all of the studied intersections would satisfy LATR. See Ex. 101.

Counsel for the CCC on Friendship Heights, Norman Knopf, commented in a written submission that the higher trip generation rate now projected for the school further supports the need for a traffic light at River Road and Landy Lane. See Ex. 104 at 1. Mr. Knopf noted that the March 2008 Traffic Study Amendment continues to show the same trip generation rates for the proposed apartment building, which the CCC on Friendship Heights finds so low as to be “inconsistent with common sense and experience.” Ex. 104 at 2. Finally, Mr. Knopf notes that the Applicant did not provide any information as to how the trip distribution percentages were developed. Accordingly, the CCC on Friendship Heights could not comment on that part of the submission. Mr. Knopf pointed out that detailed traffic analysis is expected to take place during subdivision review, and he anticipates that any issues related to trip distribution would be resolved at that time. See *id.*

Mr. Knopf is correct that the Applicant has not provided any explanation for how the “existing school trip distribution” used in the revised projections was developed. Presumably, it was based on the percentage of vehicles turning left and right out of the school entrances in the April 2007 counts. The Hearing Examiner performed some basic calculations using the turning movements recorded in the April 2007 traffic counts, and these calculations suggest that the existing trip distribution rates are closer to those in the amended traffic study than to those in the original traffic

¹¹ The Hearing Examiner’s analysis of the trip distribution rates was hampered by the fact that the March 2008 Traffic Study Amendment was submitted in black and white, while the legend for the trip distribution map apparently requires color reproduction to be understood. The Hearing Examiner deduced which percentages were from the original, October 2007 Traffic Report by comparing page 4 of the March report with page 10 of the original report.

study. These calculations were necessarily incomplete, because the record lacks data showing where vehicles go after their initial turns out of the site. Nonetheless, they provide a basic level of assurance that the revised trip distribution figures are reasonable. Moreover, Technical Staff noted that “the revised future school trip distribution is consistent with the existing school traffic pattern,” implying that Staff found this approach acceptable. See Ex. 101. Perhaps Staff considered it acceptable for the Applicant to depart from the trip distribution parameters outlined in LATR – which might have resulted in CLVs at the intersection of River Road and Little Falls Parkway in excess of the congestion standard – because the Applicant was not using LATR trip generation rates .

It would have been helpful to have, from the Applicant, an explanation or justification for the trip distribution figures used in the Traffic Study Amendment. It also would have been helpful to have, from Transportation Planning Staff, an analysis of the Applicant’s methodology and why it was considered acceptable. In light of the analysis above, however, the Hearing Examiner does not consider these defects sufficient to warrant denial of the rezoning application.

Traffic generation for the proposed multi-family building was based on MNCPPC trip generation rates for independent senior apartments. This calculation resulted in an estimate that 121 dwelling units would generate only six trips during the morning peak hour and five during the afternoon peak hour. Mr. Schofer opined that this estimate was ridiculously low, considering that the age restriction means only that one person per dwelling unit must be age 55 or older.¹² See Tr. at 232-33. As several people noted during the hearing, most people are still working at age 55, and a 55-year-old person could share his or her apartment with a spouse, friend or adult child who is well under age 55 and intends to keep working for many years. On the other hand, some residents may be older people who don’t drive, or don’t regularly drive during the peak hours. Moreover, Technical Staff accepted this traffic generation methodology, and Mr. Schofer did not present any specific

¹² Mr. Schofer’s testimony exhibited some confusion, because he was asked whether an estimate of *three* trips would be reasonable, not an estimate of six trips. Nonetheless, he clearly expected a much larger number than either three or six.

evidence to refute it. In addition, the Applicant's first post-hearing traffic submission indicates that using trip generation rates for independent senior housing developed by the ITE, which is commonly cited as an authoritative source, would produce projections that are larger, but unlikely to make a difference in CLV calculations: 10 trips in the morning peak hour v. 6 projected under MNCPPC rates, and 14 trips in the afternoon peak hour v. 5 under MNCPPC rates. See Ex. 92(b).

Using the revised trip generation projections for the school expansion and the projections for the apartment building discussed in the previous paragraph, the Applicant's traffic consultants concluded that the proposed development would not cause CLV to rise above the 1,600-CLV congestion standard at any of the studied intersections. The highest CLV calculated at any of the studied intersections is at River Road and Little Falls Parkway, where CLV in the afternoon peak hour would rise from 1,573 currently to 1,588 with the proposed development. The County's traffic experts at MNCPPC found the submitted traffic analyses to be adequate. If the rezoning is approved, traffic impacts will be reviewed again at subdivision, at which point the 2007-2009 Growth Policy will apply and the Applicant will be required to mitigate 30 percent of its trips. See Staff Report at 10. In addition, the Applicant has already committed to seek approval for and contribute to the cost of a significant traffic improvement, in the form of a traffic light at River Road and Landy Lane, if it is approved during later reviews. The Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed development satisfies LATR.

There was extensive, unrefuted testimony from community members about problems with neighborhood cut-through traffic. The testimony indicated that River Road heading into Washington D.C. gets so backed up at Little Falls Parkway during the morning rush hour that drivers get off River Road several blocks before Little Falls Parkway, turning left on Dorset Avenue, a local residential street, and going through Kenwood and Somerset to get to Little Falls Parkway or to Wisconsin Avenue and parts beyond. The County has installed extensive signage in Kenwood prohibiting turns onto neighborhood streets during the morning rush hour, including Dorset Avenue,

but it is clear that the sign are routinely ignored, and that local residents consider the cut-through traffic to be an imposition that detracts from their quality of life. See Testimony of Terry Radigan, Robert Shaffer, Jeffrey Slavin and Jenny Sue Dunner.

A resident of the Kenwood House, a building with an excellent view of the subject site's Little Falls entrance, testified that cars waiting to pick up students at the subject site when classes end line up in the right-of-way on Little Falls Parkway, causing additional congestion problems. See Testimony of Jean Iker. Several community members complained that currently, the distribution of trips is opposite what the Sector Plan envisioned. Rather than one third of site traffic using Little Falls Parkway and two-thirds River Road, at present about two-thirds of site traffic uses Little Falls Parkway and one-third River Road. See Testimony of Sue Schumacher, Jeffrey Slavin, Jenny Sue Dunner. This testimony was supported by informal traffic counts conducted by community members and by traffic counts that the Applicant submitted after the hearing. See Testimony of Sue Schumacher and Robert Shaffer. Community members argued persuasively that school parents and others traveling to the subject site often turn from River Road onto Dorset Avenue to avoid the congestion and the difficulty of turning left on Landy Lane. This leads them to enter the site from Little Falls Parkway instead of from the River Road side.

Of the seven community members who testified about the traffic problems, all stated that the problems would be exacerbated by the proposed development, and all but one supported a traffic light at River Road and Landy Lane as a solution. Community members maintain that installing a light at that location would make it easier to turn from River Road onto Landy Lane, encouraging people to use that entrance to the subject site instead of going through the neighborhood to get to the Little Falls Parkway entrance. Community members argue that a traffic light at that location is essential to deal with the additional traffic that the proposed development would bring. Mr. Schofer, the traffic expert who testified for the CCC on Friendship Heights, opined that the proposed traffic light would be beneficial. Nicole White, the traffic expert who testified for the Applicant, was more guarded

in her opinion, stating that a traffic light might work or might worsen congestion by causing through traffic to slow down. Ms. White opined that improvements can certainly be made, but that a thorough study would be needed to identify the best solution. See Tr. at 149-51.

Pursuant to its agreement with the CCC of Friendship Heights, the Applicant has agreed, as a textual binding element of the Development Plan, to request approval for a traffic light at River Road and Landy Lane from the State Highway Administration, and to contribute to its cost. Counsel for the CCC of Friendship Heights agreed that the rezoning need not be contingent on the approval of the traffic light, given that approval would be beyond the Applicant's control. It is clear, however, that the proposed traffic light is extremely important to area residents. Counsel for the CCC of Friendship Heights stressed that in his view, the chance of success in obtaining approval for the light would be enhanced if the District Council were to state its support for a light in the context of this rezoning application. If the District Council approves the requested rezoning, its approval of the Development Plan will include accepting the textual binding elements, among them the Applicant's commitment to seek approval for the traffic light. This implies the Council's endorsement of the proposed traffic light, provided that it is approved by the State Highway Administration.

The Applicant has also committed, in the textual binding elements on the Development Plan, to ensure that no traffic entering the subject site will queue or stack up on public streets. Ms. White testified that the Development Plan can accommodate a circulation plan that will prevent off-site stacking. The textual binding elements further specify that Phase 1 of the proposed development, if approved, will include creating two drop-off/pick-up points on the site, instead of the single point that currently exists. In addition, the textual binding elements specify that gates or other control measures will be used to prevent, to the extent possible, the school's property from being used for cut-through traffic unrelated to school functions. Transportation Planning Staff at MNCPPC has suggested an access control measure (such as a gate) on Landy Lane to limit cut-through traffic. See Staff Report Attachment 7. Between the textual binding element and the recommendations of Transportation

Planning Staff, it is clear that access controls will be under consideration at site plan and subdivision review. The Development Plan and a conceptual circulation plan, Exhibit 33(e), suggest that the new site layout would significantly improve site circulation and would eliminate off-site vehicle queuing, which should have a beneficial effect on local congestion. Moreover, the Applicant's commitment to seek approval for a traffic light was bolstered by testimony and representations by counsel indicating an intention to take affirmative steps to limit the school's traffic impacts, even if a traffic light is not approved.

There is evidence to suggest that the proposed development could add to the cut-through traffic problems on Dorset Avenue if a traffic light is not approved at River Road and Landy Lane (or even, perhaps, if it is approved but does not have the desired effect on drivers). However, in light of the improved site layout shown on the Development Plan and the Applicant's commitment to take several specific steps to improve traffic conditions, as well as the LATR analysis provided above, the Hearing Examiner finds, based on a preponderance of the evidence, that the proposed rezoning and development are unlikely to have adverse impacts on traffic conditions in the surrounding area.

2. Water and Sewer

The subject property is in Water Service Category W-1 and Sewer Service Category S-1, and will continue to be served by existing water and sewer mains nearby. See Staff Report at 5; Tr. at 140.

3. Schools

Montgomery County Public Schools ("MCPS") reports that as an age-restricted senior housing development, the proposed project would have no impact on the public schools. See letter dated December 10, 2007 from Bruce H. Crispell to Carlton Gilbert, MNCPPC ("MCPS Letter"). This was confirmed by community member Sue Shumacher, a real estate agent, who testified that in

senior housing where one person living in each unit must be at least 55 years old, children are prohibited under federal law. See Tr. at 196.

I. Community Participation

Eight community members testified at the hearing in this case, most of them representing citizens' groups. Community witnesses are listed below and their testimony is summarized in Part IV:

Patricia Baptiste, representing the Capital Crescent Trail Coalition
Robert Cope, representing the CCC of Friendship Heights
Jenny Sue Dunner, Kenwood resident and member of the CCC of Friendship Heights and the Capital Crescent Trail Coalition
Jean Iker, representing Kenwood House (mid-rise cooperative adjacent to north)
Terry Radigan, Kenwood resident
Susan Schumacher, representing the Kenwood Condominium (high-rise nearby to south)
Robert Shaffer, representing Kenwood Citizens Association
Jeffrey Slavin, representing the Town of Somerset

The record also letters from Edward T. Connor, a Kenwood resident who lives near the intersection of River Road and Dorset Avenue, and from the Springfield Civic Association and the Wood Acres Citizens Association. See Exs. 82, 86 and 87.

With the exception of Patricia Baptiste, who addressed the issue of parking spaces v. other amenities for the Capital Crescent Trail, all of the community testimony and letters addressed the traffic issues summarized in Part III.H above: cut-through traffic on Dorset Avenue and congestion on River Road and Little Falls Parkway. Some participants focused on the over-use of the school's Little Falls Parkway entrance v. its Landy Lane entrance, and others focused on the burden of cut-through traffic in Kenwood and Somerset. Mr. Radigan and Mr. Connor both live at the corner of River Road and Dorset Avenue, and have extensive, first-hand experience with drivers' tendency to ignore the "no turn" signs that are intended to prevent cut-through traffic. Community members are concerned that the additional development proposed for the subject site will exacerbate current traffic problems. With one exception, all of the community participants who addressed traffic support a traffic light at River Road and Landy Lane as a possible solution to the traffic problems. Another suggestion is increased

enforcement of the existing “no turn” restrictions, which is beyond the scope of a rezoning application. Only Mr. Radigan failed to endorse the idea of a traffic light. In his view, there is no effective solution, and things will only get worse with the proposed development.

IV. SUMMARY OF HEARING

A. Applicant’s Case in Chief

1. James Page Lansdale, school representative. Tr. at 22-50; 82-50.

Mr. Lansdale is the immediate past Chair of the Board of Trustees of the Washington Epsicopal Day School, and was authorized by Board resolution to represent the school during these proceedings. He described the school's founding and how it came to own the subject property, first the northern six acres and more recently the southern five acres, and to file the present rezoning request. Mr. Lansdale observed that if the rezoning is approved, the proceeds from the sale of one acre of land would allow the school to pay off the financing costs for the five-acre purchase and solidify its ability to remain on its present campus for generations to come.

Turning to the Development Plan, Mr. Lansdale described the school's expansion plan, which involves an expansion of the school building to the east, a new athletic field east of the school building, four sports and tennis courts and modifications to on-site parking. He noted that the Development Plan that was presented to the Planning Board showed ten parking spaces along Landy Lane, at the northwest corner of the site, near the entrance to the Trail. Those were placed on the plan based on a request from Technical Staff, and the school was not aware that the parking spaces would generate the community opposition that followed. As of result of the community reaction, Mr. Lansdale explained, the parking spaces were removed from the Development Plan and replaced with a textual binding element stating that the school will construct an amenity for the Trail to be identified at a later stage.

Mr. Lansdale maintained that the proposed development would be a benefit to the community as well as the school, as it would completely de-industrialize the property and replace

some of the older office buildings with green playing fields. Mr. Lansdale added that nearby residents have the opportunity to send their children to the school, and that with the additional space the school will increase its summer-camp offerings, providing another opportunity for the children of area residents. In addition, the Applicant intends to install access controls on campus to reduce the amount of cut-through traffic going through residential neighborhoods. Mr. Lansdale explained that the school intends to allow free flow of traffic during school operating hours, to allow convenient access for students, employees and visitors such as visiting sports teams, but to block cut-through access when the school is not operating. He stated that the school's athletic events generally end by 4:30 in the afternoon. Tr. at 84.

Mr. Lansdale observed that the school believes there is a natural connection between residents in their 50's, 60's and 70's and young children, and that the school and senior housing will be very compatible with one another. He stated that the school intends to allow residents of the multi-family building on site to use the school's outdoor facilities when the school is not using them, and to invite them to activities on campus such as sporting events, recitals and lectures. He noted that the school intends to make its facilities available to community groups as well, when not needed for school functions. He also noted that while the site will remain private property, the school has worked with the community to extend sidewalks and mark new pedestrian walkways on existing pavement, to create a pedestrian pathway from Little Falls Parkway, through the school site to the Capital Crescent Trail.

Mr. Lansdale observed that the Sector Plan recommends 180,000 square feet of office space on the subject site with 10,000 square feet of retail, and the school is proposing a much less intense use, with 175,000 square feet of school space plus 121 age-restricted dwelling units in one multi-family building. He noted that both a school and residential use are allowable under the Sector Plan, and that the space proposed for the school is roughly equivalent to the amount of office space the Sector Plan envisioned.

2. William Landfair, land planner. Tr. at 55-69; 73-82; 85-101.

Mr. Landfair was designated an expert in land planning. He described the location of the subject property, in a surrounding area with a scattered mix of residential, institutional, commercial, light industrial and retail uses, as well as a number of high-rise multi-family buildings, and single-family residential neighborhoods beyond the surrounding area. He defined the surrounding area using boundaries established in the master plan.

Mr. Landfair noted that the subject property is classified partly under the CO (Commercial, office building) Zone and partly under the R-30 (multi-family residential) Zone, and has access from both Little Falls Parkway and Landy Lane.

Mr. Landfair testified that the proposed development, if approved, will be implemented in two phases. The first phase will include the proposed eight-story multi-family residential building in the southeast corner of the site, with a maximum of 121 dwelling units, plus a low building with 200 parking spaces in an underground garage. The first phase will also include an extension of Landy Lane to end in a cul de sac, the construction of sidewalks to improve pedestrian access throughout the site, and the creation of two drop-off/pick up points for students along the loop road that circles around the campus. Mr. Landfair noted that simultaneous with the construction of the multi-family building, the adjacent office and warehouse buildings along the east side of the property will be demolished and the underlying land stabilized and improved for recreational purposes.

The second phase, Mr. Landfair continued, will implement the school's master plan and will occur at one or more unspecified times in the future, depending on the success of the school's capital improvement program. The plan would retain the existing three-story school building and construct an additional three-to-four-story school building on the east side of the existing building. The maximum area anticipated for the school is 175,000 square feet. Mr. Landfair stated that the Development Plan provides for 137 parking spaces for school use, plus overflow parking on the tennis courts during special events such as graduation. He explained that any fencing between the courts

would be taken down, and the courts would be built with paving that can withstand parked cars. He noted that the location proposed for the tennis courts is currently paved for vehicular use, so the development team believes the sub-surface will support parking. Mr. Landfair added that the reconfigured internal loop road will provide improved vehicular and pedestrian circulation, and extensive landscaping along the new road will create a more interesting and inviting street environment.

Mr. Landfair reviewed the textual binding elements on the Development Plan, which address land use, density, building height, setbacks, access, community facilities, shared use facilities, circulation and phasing. He noted that the circulation plan would include gates and other measures to impede cut-through traffic and prevent vehicular stacking on public streets, especially Little Falls Parkway.

Mr. Landfair acknowledged that the proposed multi-family building would be very close to the adjacent light-industrial buildings, within 10 to 20 feet. He noted that the nearby Kenwood Condominiums building is close to a light industrial area, although not as close as the building planned for the subject site. Mr. Landfair stated that the industrial buildings adjacent to the subject site appear to have few doorways or windows facing the subject property, so those buildings will not have much view of the new, much taller multi-family building. He stated that there would be limited means to screen the view of the industrial buildings from the multi-family building, particularly because of an intervening Pepco easement that may impede landscaping. Mr. Landfair stated that there are other buildings in the vicinity that have similar views. He pointed out a light-industrial area across River Road, near the Westwood Shopping Center, that is immediately adjacent to a high-rise.

Turning to the Sector Plan, Mr. Landfair stated that it divided the planning area into geographical sub-areas based on groups of properties that were similar when the plan was adopted in 1982. He explained that the Sector Plan considered possible alternative treatments and made recommendations for each area. The subject property was in analysis area B, which the Sector Plan

describes as “unique in that it is the only site of its size in Westbard without difficult terrain or man-made features which would preclude unified development.” Tr. at 76, quoting Sector Plan at 39. Mr. Landfair noted that the Sector Plan described potential development problems including the 100-year flood plain for Willett Branch, which cuts a wide swath through the subject site and forces development away from adjacent residential neighborhoods.

Mr. Landfair described the Sector Plan’s specific recommendations for the subject site, opining that the Development Plan proposed in this case improves on the Sector Plan’s vision by reducing the overall square footage, intensity of use, parking demand and traffic generation. He noted that limiting the building area and concentrating residential development in the southeast corner of the property would allow more on-site green space in the form of athletic fields, tennis courts and green play areas.

Mr. Landfair opined that in this case, the PD Zone would provide a means of achieving the Sector Plan’s vision by providing the design flexibility necessary to create appropriate internal site relationships, parking strategies and setbacks to integrate the two uses proposed. Referring to the purpose clause for the Purpose Zone, he maintained that the two uses would be mutually compatible and blend well with the nearby commercial, multi-family and single-family uses. He noted that relying on underground parking for the multi-family building and using the tennis courts for overflow parking would reduce paving and associated environmental impacts. He opined that the Development Plan emphasizes providing a safe and secure setting for the school while providing for as much interaction as possible between the school and residents of the multi-family building, who will enjoy the open spaces and have limited use of them. Mr. Landfair described the loop road and its streetscape as creating a distinctive visual character, as well as facilitating interaction among site residents and the school. He observed that improved access to the Capital Crescent Trail would contribute significantly to social and community interaction.

Mr. Landfair noted that building the tennis courts on existing pavement would reduce the amount of grading required, and that a significant amount of existing impervious surface would be removed from the site by replacing industrial buildings with an athletic field, and by removing a substantial amount of surface parking. Turning to the open space component of the PD Zone purpose clause, Mr. Landfair acknowledged that that the proposed open space, in the form of landscaping, yard areas and two athletic fields, would primarily benefit the school community, but he argued that it would contribute visually to the surrounding area, particularly people crossing the Trail to Little Falls Stream Valley Park, and reiterated that residents of the multi-family building on site would have some access. When asked whether residents of nearby neighborhoods would be able to walk through the site to the Trail, Mr. Landfair stated that such activity would be neither encouraged nor discouraged, but there is a gate in the school fence near the Trail that is unlocked, so it can always be used. Tr. at 89. With regard to safety, convenience and amenity for residents of the site and neighboring areas, Mr. Landfair stated that the proposed development would provide sidewalks for the safety of site residents and the school community, and would improve emergency access by turning the end of Landy Lane into a cul de sac with room for turnarounds. He argued that the proposed senior multi-family building would contribute to housing diversity in the area while maintaining compatibility with nearby multi-family dwellings, and added that the Applicant has committed to seek approval for a traffic light at Landy Lane and River Road, which would improve site access.

Mr. Landfair opined that each of the five findings required under Section 59-D-1.61 can be favorably made in this case, reiterating pertinent points from his earlier testimony.

Under questioning from Mr. Knopf, Mr. Landfair agreed that the land is higher across Little Falls Parkway from the subject site, although he could not say by how much. He acknowledged that during the winter, homes on Somerset, close to the park, can see the subject site, and from their rear yards would probably be able to hear sounds from the site such as children playing and shouting.

In Mr. Landfair's view, however, the sight and sound impacts on those homes from the subject site are minimal due to the amount of vegetation in the intervening park. Mr. Landfair acknowledged that some homes on Kennedy, Norway Drive and Longway, to the west of the site, may be within sight or sound of the site, but in his view, any impact is mitigated by vegetation within the Trail right-of-way. He also agreed that one might want to extend the boundaries of the surrounding area for this application if it were substantiated that the subject site generates significant traffic on Dorset Avenue, through a residential neighborhood. Mr. Landfair agreed that a traffic light at Landy Lane and River Road would improve the safety and adequacy of access to the site from River Road. Finally, he confirmed that to the extent anything in his written land use report contradicts the terms of the textual binding elements that were written later, the textual binding elements and Mr. Landfair's testimony supercede the written report. See Tr. at 99.

3. Greg Fernebok, multi-family residential developer. Tr. at 69-73.

Mr. Fernebok is a principal with Sheridan Development, which intends to purchase one acre of the subject site and build the proposed multi-family residential building. He testified that his company currently intends to offer the building as a rental property, and that rents would be tiered based on what floor a unit is on and what view it has. Thus, views of the playing field and green area would have a higher value than views of the industrial building, and closer views of the industrial buildings on the lower floors would draw lower rents than on higher floors.

Mr. Fernebok stated that his company does a lot of multi-family development in the area, and just finished a 92-unit condominium building at the corner of Bradley Boulevard and Wisconsin Avenue, about three-quarters of a mile from the subject site, which is about 15 feet from a commercial office building. Some views from that building look directly into the office building, and others look across commercial rooftops. Mr. Fernebok noted that the majority of units have already been sold and the project is going well, so he believes there are people willing to accept that kind of view. He also noted that within a few blocks of the subject site is a multi-family building that was

retrofitted as a college dormitory for American University, and it overlooks an industrial area with an old concrete plant, auto body uses and “all kinds of very ugly properties.” Tr. at 72. Fundamentally, Mr. Fernebok is comfortable that that uses on and adjacent to the subject site can coexist compatibly.

4. Gregory J. Osband, landscape architect. Tr. at 117-125.

Mr. Osband was designated an expert in landscape architecture. He used the NRI/FSD and an illustrative plan based on the approved preliminary forest conservation plan to explain how the proposed development would satisfy Montgomery County's forest conservation requirement and environmental guidelines. He stated that currently, a majority of the site is covered with impervious surface. There are some tree stands and individual trees, but nothing that qualifies as forest. Mr. Osband noted that there is forest adjacent to the site in the rights-of-way for Little Falls Parkway and the Trail, and that the Applicant would take stapes to protect the larger trees that are right up against the subject site. He stated that the proposed development would benefit nearby forest by removing a heavy bamboo stand that is starting to creep into the forest.

Mr. Osband described Willett Branch, a tributary to Little Falls that originates east of the subject site and runs through a concrete channel that was built under the subject site when that was the standard way of doing things. He noted that the flood plain for this stream runs through the subject site, and the Development Plan provides for stream buffers per the County's environmental guidelines.

Among the environmental benefits of the proposed project, Mr. Osband stated, would be the removal of a significant amount of impervious area, increasing run-off infiltration and decreasing surface run-off. The majority of the stream buffer area is currently paved, covered with parking lots and a basketball court, and all of that paving would be removed with the proposed plan. Also, the Applicant plans additional forest plantings adjacent to Little Falls Parkway and in a small area adjacent to the proposed athletic fields. In addition, the tennis courts are planned to be located back from the edge of the site, to keep them on existing pavement. Mr. Osband stated that the courts

will have to be stepped down to some degree to make them level, and to protect some specimen trees growing very close to the edge of the property. He noted that the additional trees proposed along roadways and in parking areas would help meet forest conservation requirements and decrease thermal heating from parking areas.

5. Max Kantzer, civil engineer. Tr. at 126-140.

Mr. Kantzer was designated an expert in civil engineering. Currently, slightly more than eight acres of the 11-acre site is covered with impervious surface. Mr. Kantzer noted that about 1.6 acres of impervious surface would be removed in connection with the proposed development. That calculation excludes the area of the athletic fields, which are not considered pervious surfaces because the school wishes to reserve the right to convert them at some point to synthetic turf, a mixture of sand, rubber particles and other materials that Montgomery County does not consider pervious. Tr. at 140.

Mr. Kantzer described the impact on development of the site caused by Willow Branch. He stated that there is a drainage divide essentially in the middle of the subject site, with everything to the right draining eventually to the Willow Branch and everything to the left draining into two storm drains in Landy Lane, eventually joining the same drainage channel. Recognizing that there is very little space for open stormwater management facilities on the site, Mr. Kantzer plans to employ underground facilities, with a combination of storm filter and underground vaults for both water quantity and quality management. He stated that the plans also include expanding an existing surface bio-retention facility at the north end of the site, near the existing athletic field. He noted that the site currently has very little stormwater management, so the proposed development would bring a significant improvement in that area. He stated that the Applicant is not currently requesting waivers of any stormwater management requirements, and has submitted a concept plan to DPS but had not received any comments at the time of the hearing. Mr. Kantzer described the stormwater management plan for the subject site as fairly straightforward, because options are limited. He

acknowledged that some changes may be made, potentially including the use of some green roofs, but he is very confident that there is at least one workable solution that can meet all the requirements.

Mr. Kantzer noted that the subject site is served by public water and sewer and the existing lines appear to be adequate to serve the proposed development.

6. Nicole White, traffic engineer. Tr. at 140-176; 186-195.

Ms. White was designated an expert in traffic engineering and transportation planning. She described the traffic study prepared by her firm, following the LATR Guidelines, and its conclusion that the four intersections studied currently operate with a CLV below the applicable congestion standard, and would continue to do so with the proposed development. She noted that although the subject site's access points on Little Falls Parkway and Landy Lane were not among the intersections that Technical Staff directed the Applicant to study, her firm carried out traffic counts at both access points. Calculations based on those counts indicate that both access points operate with CLVs below the applicable congestion standard of 1600. With the proposed development in place, Ms. White projects a CLV of 1,030 during the morning peak hour and 1,110 during the evening peak hour at the school's Landy Lane entrance, and a CLV of 612 during the morning peak hour and 521 during the evening peak hour at the school's Little Falls Parkway entrance.

Ms. White acknowledged concerns voiced by community members about cut-through traffic and the need for a traffic signal at River Road and Landy Lane. She confirmed that the Applicant has agreed to study the need for a traffic signal, and that all parties agree on the need to look for opportunities to improve access at that intersection. Based on her company's field observations, Ms. White expressed concern that the traffic signal that community members desire could create a worse situation on River Road by causing delays for through movements, which could actually increase cut-through traffic rather than decreasing it. Ms. White stated that the situation needs to be studied in a comprehensive manner to identify a solution, but she is confident that a solution can be found to improve access, whether through traffic management or engineering design.

Ms. White opined that if the proposed school expansion is implemented, the school will be able to fulfill the commitment stated in the textual binding elements to make sure that all vehicular stacking during student drop-off and pick-up takes place on site, not in the public roadways. She stated that her firm observed the existing drop-off and pick-up situation and, based on those observations, estimated what the future queue length might be. In her view, there is adequate storage space on site for the number of vehicles, it's just a question of working out the best circulation pattern. See Tr. at 153.

Under questioning by Mr. Knopf, Ms. White acknowledged that the CLV analysis required under LATR does not indicate how long drivers have to wait to make a turn at an intersection or how far back turning queues extend. She indicated that she might use different software to assess delays, such as highway capacity software. See Tr. at 156.

Ms. White explained that the trip estimates she prepared for the site access points were based on trip generation rates provided by MNCPPC and the Institute of Transportation Engineers ("ITE"). Those rates assign a lower rate of trip generation to senior housing than to multi-family housing that is not age-restricted. Ms. White acknowledged, however, that many people at the minimum age for such housing, age 55, still work. See *id.* at 159. She agreed that doubling the number of trips that 300 new students are expected to generate would be a reasonable way to estimate the total number of trips the school would generate post-expansion, with a total enrollment of 600. The CLV analysis, she explained, only assesses new trips, because existing ones are assumed to be covered in the counts of existing traffic. Ms. White explained, moreover, that she estimated the number of trips the 300 new students would generate based on MNCPPC's trip generation rate for a private school, rather than by extrapolating from actual driveway counts at the school, because in her experience that is what Technical Staff at MNCPPC prefers. She noted, however, that she compared the results of both approaches and found them comparable. See Tr. at 161.

Ms. White did not have the actual numbers for traffic counts at the site access points available at the hearing, but agreed to provide them after the hearing. She did recall that the counts showed more cars entering the site from Little Falls Parkway than from Landy Lane. The CLV was lower at the Little Falls driveway than the Landy Lane driveway, she explained, because traffic volumes on River Road are much higher than on Little Falls.

During a discussion of how trip generation rates were derived and whether they reflect a reasonable simulation of reality, Ms. White displayed limited familiarity with the details of the traffic study prepared by her firm. Her limited knowledge made it difficult to fully understand the details of the traffic study in this case. In particular, she had no explanation for why her firm used MNCPPC trip generation rates for a private school even though the LATR Guidelines in effect at the time specified that a special study would be needed to determine a trip generation rate for a school with 400 or more students. See Tr. at 168. Nonetheless, the traffic study was accepted by Transportation Planning Staff, and the Hearing Examiner finds that the weaknesses in Ms. White's testimony do not undercut the traffic study sufficiently to warrant denial of the rezoning application.

B. Community Participation

1. Patricia Baptiste, Capital Crescent Trail Coalition, Tr. at 51-55.

Ms. Baptiste serves on the Board of the Capital Crescent Trail Coalition (the "Trail Coalition"). She testified that the Trail Coalition was very concerned about the parking spaces that were shown within the Trail right-of-way on an earlier version of the Development Plan. They recall an effort in the past to provide parking on the other side of the Trail at this very location, and there was no enforcement to limit the parking to Trail users, so it was used by all sorts of people looking for parking. In her view, there are ample parking opportunities in the area, so there is no reason to pave this area and draw in cars that are not carrying Trail users. Ms. Baptiste noted that after the Trail Coalition met with the Applicant and its attorney and spoke at the Planning Board's hearing, it was agreed that the parking spaces would be removed. She added that the Trail Coalition supports the

current textual binding element on the Development Plan stating that the Applicant will contribute to a Trail amenity to be determined at site plan.

2. Terry Radigan. Tr. at 102-107.

Mr. Radigan first read into the record a letter from his neighbor of 30 years, Edward T. Connor, of 5500 Dorset Avenue, Chevy Chase. Mr. Connor writes that the proposed expansion of the school and additional development between Landy Lane and Little Falls Parkway may adversely impact the Kenwood community. In particular, he draws attention to the intersection of River Road and Dorset Avenue, where signs prohibiting turns onto Dorset during rush hour are routinely ignored and rarely enforced. Mr. Connor maintains that with increased traffic from the subject site, measures must be taken to minimize cut-through traffic through Kenwood for quality of life and safety. He suggests a traffic light at River Road and Landy Lane, and enforcing the turning restriction at River Road and Dorset Avenue, particularly during weekday morning school starting hours.

Mr. Radigan lives at the corner of River Road and Dorset Avenue, next door to Mr. Connor. He stated that the Kenwood Community has four entrances, all heavily restricted with signage, most of which prohibit turns into the neighborhood during the peak travel hours. In Mr. Radigan's experience, morning traffic starts to back up at Springfield Road, north/west of Dorset at the Kenwood Club entrance. When it backs up that far, drivers start cutting through Dorset to get to Little Falls Parkway or Wisconsin Avenue. Mr. Radigan is persuaded that any redevelopment under the Westbard Sector Plan will affect Kenwood traffic. He believes that a traffic light at Landy Lane and River Road will not help, because people will not go down that far – they will still exit River Road at Dorset Avenue. He believes this is a traffic problem with no ready solution, and that the proposed development will only make matters worse.

3. Robert Cope, CCC on Friendship Heights. Tr. at 108-117.

Mr. Cope is a lawyer, Chair of the Citizens Advisory Board to the Friendship Heights Transportation Management District and Chair of the Joint Committee on Westbard, a sub-committee

of the CCC on Friendship Heights. He was also Chair of the CCC on Friendship Heights for seven to eight years during the preparation of the Sector Plan. He stated that the CCC on Friendship Heights is an umbrella group representing about 12 citizens associations, including Kenwood, Kenwood Condominiums, Chevy Chase Village, Chevy Chase West, Westmoreland, Somerset, Green Acres, Glen Cove, Brookdale and Springfield. Mr. Cope reported that the CCC on Friendship Heights starting working with Mr. Knopf when this application came up, and talking to the Applicant and their counsel. They voted to support the application subject to certain binding elements, including a contribution to a stoplight the community hopes will be approved at Landy Lane and River Road.

Mr. Cope described his committee's work on an upcoming revision to the Sector Plan, which includes proposing a traffic light at River Road and Landy Lane to address not only traffic from the school, but traffic conflicts on the other side of River Road, where two separate streams of traffic enter the intersection. He emphasized that the CCC on Friendship Heights believes it will help get approval from the State Highway Administration if the rezoning process endorses the concept of installing that light. Finally, Mr. Cope mentioned the Sector Plan recommendation that one-third of the traffic to the subject site should use Little Falls and the rest River Road. In his view, the current traffic breakdown is probably the opposite of that. He argued that the proposed traffic light would encourage people to use River Road and decrease the pressure on Little Falls Parkway.

4. Robert Shaffer, President, Kenwood Citizens Association. Tr. at 176-186.

Mr. Shaffer spoke on behalf of the Kenwood Citizens Association. He is a native of the area, having never lived more than three miles from this stretch of River Road, and has lived 900 feet from the intersection of River Road and Landy Lane for the last 15 years. Thus, Mr. Shaffer is well aware of increased congestion along this stretch of River Road over the years. He stated that the Kenwood community is concerned that higher enrollment at the school will lead to more cut-through traffic going through their neighborhood. He testified that traffic has steadily increased on River Road over the years and safety has decreased. With the number of businesses now operating near River

Road and Landy Lane, he finds it is nearly impossible to cross River Road by car or on foot without a traffic light. Even where there is a light, at Brookside Drive, he finds it nearly impossible to turn south on River Road because the intersection is totally blocked.

Mr. Shaffer confirmed Mr. Radigan's testimony about heavy cut-through traffic and drivers regularly ignoring the "no turn" signs into the Kenwood neighborhood. See Tr. at 178-79. He believes that a traffic light at River Road and Landy Lane would help the situation by making it easier for southbound drivers to turn left on Landy Lane.

Mr. Shaffer believes that the portion of Kenwood nearest the school, particularly Longway and Kenwood Avenue, are affected by noise from the school and should be included within the surrounding area. He noted that homes on Longway also can see the school during the winter.

Mr. Shaffer confirmed that his organization is part of the CCC on Friendship Heights, which did some traffic counts with volunteers. Mr. Shaffer and fellow community member Dennis Potts parked from 7:45 to 8:15 on the morning of January 10, Mr. Potts at Landy Lane and River Road and Mr. Shaffer on Little Falls Parkway with a view of the school entrance (school starts at 8:10 a.m.). Mr. Shaffer counted 146 cars entering the subject property during that 30-minute period, 100 turning right and 46 turning left. Mr. Potts counted 93 vehicles turning onto Landy Lane from River Road, the majority of which had children in them, although some may have been heading to other destinations on Landy Lane. Assuming all of the 93 vehicles were heading to the school, about 66 percent of the traffic used the Little Falls entrance.

5. Sue Schumacher, Kenwood Condominium. Tr. at 195-207.

Ms. Schumacher spoke on behalf of her residence, the Kenwood Condominium building located at the northeast corner of River Road and Little Falls Parkway, just south of the subject site. Ms. Schumacher is a real estate agent, and testified that in senior housing where one person living in each unit must be at least 55, children are prohibited under federal law. See Tr. at

196. (This was in response to some discussion earlier in the hearing about whether children would be prohibited from residing on the subject site.)

Ms. Schumacher stated that the Kenwood Condominium consists of 11 stories with 310 dwelling units, half of which face the subject site. For the Kenwood Condominium, the most important aspect of the Development Plan proposed here is a provision for a design element requiring a review of the aesthetics at site plan. Units facing the subject site on the top three floors of the Kenwood Condominium would have a direct view of the roof of the proposed multi-family building, so they are very concerned about the appearance of that roof.

Ms. Schumacher also addressed the difficulty of turning left onto River Road during the morning peak period, which she does every day. She noted that the exit from her building is directly opposite Butler Road. To make that left turn, she has to contend with traffic streaming along River Road, cars turning onto Butler Road, which has several different businesses, and cars and trucks turning from Butler Road onto River Road. She stated that a sign just before Butler Road tells drivers heading east on River Road, towards Washington, D.C., not to block the intersection when the light is read. As attested by the laughter with which this statement was greeted in the hearing room, that sign is routinely ignored. Ms. Schumacher stated that the back-up from the traffic light at River and Little Falls extends all the way up to American Plant Food, across from the Kenwood Square Shopping Center at Westbard Street. Ms. Schumacher described her strategy as getting across the first three lanes of River Road, where there are usually breaks in the traffic, then sitting on her horn until someone lets her in to make the left turn.

Ms. Schumacher suggests that with a requirement for one resident age 55 or older, the multi-family building on the subject site likely would have many residents who still have jobs outside their homes. She emphasized that the proposed building will not be an assisted living facility, but a residence for working people, generating lots of traffic. She believes those residents will have a very hard time getting onto River Road without a traffic light because they will not be aided, like Ms.

Schumacher is, by proximity to the traffic light at Little Falls Parkway. Moreover, they will be blocked from turning onto River Road by the back-up at the Little Falls light.

Ms. Schumacher testified about traffic counts that she and a friend conducted at Landy Lane and River Road during afternoon dismissal time for the school. They started counting at 3:00 and Ms. Schumacher left at 3:40. She observed that most of the cars picking up kids must be using the Little Falls entrance, because the counts were very low at the Landy Lane entrance. Only six cars turned left from Landy Lane onto River Road during that period, and 20 turned right onto River Road. Ten cars turned right from River Road into Landy Lane and 19 turned left from River Road into Landy Lane. Ms. Schumacher explained that she counted all the vehicles entering and exiting Landy Lane, and she estimates that about six of the cars exiting Landy Lane were coming from the Getty Station, not the school. She and her friend saw only three or four cars coming out of Landy Lane that had children in them.

6. Jeffrey Slavin, Town of Somerset. Tr. at 207-211.

Mr. Slavin is a council member in the Town of Somerset, a 102-year-old municipality of over 1,100 residents and 400 homes whose boundaries include Little Falls Parkway and River Road. Mr. Slavin testified that quality of life in Somerset is seriously impacted by the huge amount of cut-through traffic on Dorset Avenue, which is used by many drivers going from Bethesda to Friendship Heights or the District. He argued that if the proposed redevelopment is implemented and the number of cars accessing the subject site doubles, without a traffic light at Landy Lane all those additional drivers headed toward Washington, D.C. likely will turn right on River Road when they leave the school and make their way to Dorset Avenue, cutting through Kenwood and then through Somerset to get to Wisconsin Avenue.

Mr. Slavin noted that the subject site adjoins Somerset, which is located partly on the other side of Little Falls Parkway from the school. He stated that many Somerset homes have a view

of the subject site, particularly those on Greystone Street, and would be affected by added noise and activity.

7. Jean Iker, Kenwood House. Tr. at 211-214.

Ms. Iker spoke on behalf of the Board of her residence, the Kenwood House, a cooperative located in a building abutting the subject site to the north. The Kenwood House has 70 dwelling units, and its parking lot borders the school's existing athletic field. Ms. Iker has lived in the Kenwood House since 1971, and in Kenwood before that, so she has had ample opportunity to observe the changes that have taken place. She described the school as a positive change in the environment, except for the traffic. She believes that the proposed Development Plan would enhance the views for residents on the south side of the building, compared to the old warehouse and huge parking lot that used to be there.

Ms. Iker observed that parents at the school enter and exit from the Little Falls driveway, and in the afternoon, the pick-up line pulls over on Little Falls Parkway to allow through traffic to proceed to River Road. If there is a huge increase in the school's population, she expects that will be a big problem. Ms. Iker argued that a traffic light at River Road and Landy Lane would be a big help in alleviating the congestion on Little Falls Parkway if the school enrollment increases. She argued that it also would help residents of the new multi-family building, and would make good sense for traffic safety and circulation. Ms. Iker noted that the Kenwood Condominium was built in the 1960s and over half the residents are age 65 and older, but residents of almost all of the units have two cars, so in her experience, the older population in this area does a lot of driving.

8. Jenny Sue Dunner. Tr. at 214-227.

Ms. Dunner resides on Dorset Avenue in Chevy Chase. She is a member of the Joint Committee on River Road at Westbard and the Joint Committee on Friendship Heights and a member of the Board of the Capital Crescent Trail Coalition. She presented letters from the Springfield

Citizens Association Board and from the Wood Acres Citizens Association, both supporting a traffic light at River Road and Landy Lane. See Exs. 86 and 87.

Ms. Dunner served on the Citizens' Advisory Board for the Sector Plan, which recommended the PD Zone for the subject site. She described the plan as having many good recommendations that are still relevant and workable today. She noted that the community has worked with the school on their plans and reached an agreement to support a building of 97 feet, as the Sector Plan recommended. She observed that the multi-family building is proposed at a location that is not quite where the Sector Plan recommended it, but is far enough away from River Road so as not to be a precedent for future development on River Road. Ms. Dunner emphasized that she views the Sector Plan language related to how much site traffic uses River Road rather than Little Falls Parkway as an important recommendation. In her view, traffic and cut-through traffic are probably the greatest concern in her neighborhood right now. Having a traffic light at Landy Lane and directing school traffic to that entrance are extremely important to her community to reduce cut-through traffic.

Ms. Dunner observed that River Road in this vicinity is highly congested at all times, with numerous commercial driveways and traffic driving very fast. She stated that the Whole Foods grocery store has had to hire an off-duty policeman to direct traffic on weekends, even though they have a traffic light at their entrance. Ms. Dunner noted that there are two lanes going each way and a center turn lane that local residents call the "suicide lane". She noted that pedestrians sometimes cross mid-block, increasing the safety problems. Ms. Dunner acknowledged that there is a pedestrian bridge across River Road to the Capital Crescent Trail. To get to there, however, one has to walk a good distance back from River Road to reach the ramp that leads to the bridge. It's not a great distance, but enough that some people prefer to just take their chances crossing on the road.

Ms. Dunner participated in taking traffic counts with Ms. Schumacher the day before the hearing, staying from 2:55 to close to 4:00. She counted 43 cars turning right from Landy Lane

onto River Road, 12 cars and one truck turning left from Landy Lane onto River Road, 13 cars turning right from River Road onto Landy Lane and 17 cars turning left from River Road onto Landy Lane. See Tr. at 223-224. Ms. Dunner confirmed that most cars exiting Landy Lane were occupied only by the driver, with no children.

9. Ralph Schofer, traffic engineer. Tr. at 227-

Mr. Schofer was designated an expert in traffic engineering and transportation planning. He opined that a traffic light at River Road and Landy Lane would facilitate the use of the school's Landy Lane entrance, lessening the use of the Little Falls entrance, and would also solve some of the other traffic problems on River Road. Mr. Schofer further opined that a traffic light at River Road and Landy Lane would make ingress and egress at the school's Landy Lane entrance safer and more adequate. He added that for a citizen petitioning the SHA for that traffic light, a recommendation in this rezoning proceeding that a traffic light should be established at that location would be helpful. See Tr. at 232.

Having visited the subject site and the intersection of Landy Lane and River Road on a number of occasions, Mr. Schofer observed continuous curb cuts along this section of River Road, serving a large number of commercial establishments. In his view, serving all those businesses as well as through traffic is a pretty demanding requirement for a roadway. In addition, Mr. Schofer agreed with the "suicide lane" moniker used for the center turn lane, which is available for cars heading both directions, making its use disputable and very risky. He also confirmed the problem of pedestrian crossings identified by Ms. Dunner, given that many pedestrians are reluctant to walk the extra distance to get to the pedestrian bridge.

Turning to the Applicant's traffic study, Mr. Schofer described the projection that the proposed multi-family building would generate three trips during the morning peak hour as unbelievable. See Tr. at 232. Even in a senior facility that provides care for residents, Mr. Schofer

would expect far more than three vehicles coming and going during the morning peak hour.¹³ He also considers the estimate that 300 new students will generate 127 trips leaving the school during the morning peak hour to be unreasonable. That number of trips would suggest 2.3 children per car, which Mr. Schofer stated “would be delightful but seldom achievable.” Tr. at 235. He acknowledged that the Applicant has used trip generation rates provided by MNCPPC, but in his view, a professional has to consider the specifications provided by regulatory agencies and then use his or her judgment to determine whether the situation requires doing something more or something different.

V. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height. In the State of Maryland, a property owner seeking to reclassify his or her property from one Euclidean zone to another bears a heavy burden to prove either a change in circumstances or a mistake in the original zoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose clause and requirements for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

¹³ The traffic study actually projected six trips, three in and three out.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-tailored specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications are set forth on a development plan to facilitate appropriate zoning oversight by the District Council. Pursuant to Code §59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Ordinance, together with the grounds for the Hearing Examiner's conclusion that the evidence in this case supports the required findings.

- (a) ***That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

The first sentence of the purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans.

The density category indicated on the applicable master plan has special status in a PD Zone. If the District Council desires to grant reclassification to a PD Zone with a density category *higher* than that indicated on the applicable master plan, such action requires the affirmative vote of at least six members of the District Council. Code §59-D-1.62. In this case, the Applicants seek a density category that was recommended in the Sector Plan, so a supermajority vote is not necessary.

In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *1982 Approved and Adopted Westbard Master Plan*. The Hearing Examiner agrees. As discussed in more detail in Part III.F above, the proposed development would substantially comply with the goals and recommendations of the Sector Plan by satisfying its essential elements: a redevelopment that is compatible with diverse uses in the surrounding area, presents an attractive appearance while fitting in with adjacent and light-industrial uses, is unlikely to worsen traffic constraints and will provide a transition to adjacent light-industrial uses.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or the capital improvement program. It would further county housing policy by creating an additional housing option in Westbard, including affordable housing, and (as discussed in Part III.H above) would not be inconsistent with the Growth Policy.

- (b) ***That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.***

1. Purposes of the Zone

The purpose clause for the PD Zone, found in Code §59-C-7.11, is set forth in full below, with relevant analysis and conclusions for each paragraph following.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring

areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

1st paragraph: Master Plan implementation. For the reasons stated under (a) above and more fully in Part III.F, the proposed development would be in substantial compliance with the recommendations and objectives of the Master Plan, and would implement those objectives more fully than would be possible under other zoning classifications, particularly the existing zoning classifications, which would not support mixed use or a site layout similar to that envisioned in the Sector Plan.

Second paragraph: social and community interaction among those who live and work in an area, distinctive visual character, balanced mix of uses. Although the proposed development involves two disparate uses, the site layout and operational program would encourage social and community interaction and activity by giving residents of the multi-family building access to the school's recreational facilities, including the playing fields, future tennis courts, all-purpose sports court and paved areas, when those facilities are not needed for school use. Site residents and students would not be using the same facilities at the same time, but interaction could take place among people using neighboring tennis courts, for example, or on the paved areas available for walking or jogging. Testimony indicates that the school intends to try and integrate residents of the multi-family building into the life of the school by inviting them to school athletic events, holiday programs, recitals and other special events. Whether such invitations will be accepted remains to be seen, but there is the potential for the two uses to work together.

The proposed development would facilitate social and community interaction among site residents, area residents and potentially students at the school by preserving access from the site to the Trail. The school's representative at the hearing indicated that while the site is private property, the gate from the site to the Trail is kept unlocked, which allows community members (as well as site residents and, to the extent they are permitted off-campus, students) to reach the Trail by walking through the subject site.

The proposed development would create a distinctive visual character through the loop road winding through the site, associated landscaping, and the large amount of open space to be preserved in the form of athletic and recreational facilities. The openness of the site and residential and educational character of the buildings would be distinctive in comparison with the non-descript light-industrial buildings nearby. The proposed uses would add to a balanced mix of uses in the area by providing an additional housing option and expanding a schooling option.

Third paragraph: broad range of housing types. This development would add to the stock of multi-family housing in Westbard by providing age-restricted units at varying price levels, depending on their location within the building. The L-shaped design shown on the Development Plan would maximize the number of units with views of the school's open spaces and the Trail.

Fourth and fifth paragraphs: trees, grading and open space. There is little tree cover on the site, and none that qualifies as forest. The small amount of tree cover would be removed in connection with demolishing existing light-industrial buildings and replacing them with a green playing field. New trees would be planted along the loop road, and steps have been proposed to help protect the critical root zones of several large trees growing just outside the property line, in Little Falls Stream Valley Park. The proposed development would take advantage of trees by placing new multi-family dwellings within sight of the Trail and of Little Falls Stream Valley Park.

The larger open space areas on the site would not be available to the general community for recreation, but would provide visual respite in a highly-developed area, particularly for

several nearby mid-rise and high-rise buildings that have views onto the subject site. Their views would be enhanced by the additional playing field and other open spaces proposed on the Development Plan. Moreover, testimony indicated that members of the community at large have informal pedestrian access to the Capital Crescent Trail through the site, which would be preserved with the proposed development.

Sixth paragraph: pedestrian networks, minimizing reliance on cars. A system of sidewalks and pedestrian walkways marked along drive aisles would provide safe pedestrian access throughout the site, and from the site to the Capital Crescent Trail and Little Falls Stream Valley Park.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The Development Plan proposes a maximum of 121 dwelling units in a single building, sized to preserve maximum space for school facilities and open space.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that combining the proposed uses with substantial open space, a pedestrian network, a loop road with two access points, site amenities and school programming open to site residents would provide safety, convenience and amenity for site residents and the school. Site residents would also have ready access to the Capital Crescent Trail and to nearby businesses.

Eighth paragraph, second part: compatibility. The evidence supports the conclusion that the proposed development would be compatible with existing uses in the surrounding area. The site layout would place the tallest building at the greatest possible distance from single-family residences, with the height dropping to four stories in the middle of the site. The multi-family building would also serve as a transition between single-family neighborhoods and the light-industrial uses just south of the site. Some apartments would have close-up views of the adjacent light-industrial buildings, but this would be reflected in their cost, allowing occupants to make a choice, for example, location and price over view. The multi-family use would be consistent with existing multi-family buildings just south of the site and abutting it to the north. It would be unlikely to have any noticeable

impact on neighboring light-industrial uses, most of which don't even have doors or windows facing the subject site.

The proposed school expansion would not introduce any new elements to the area, although it would intensify activity levels on site. The school has operated at the subject site for ten years, with no evidence of any complaints except for traffic. Given the size of the site, the evidence suggests it can readily absorb the additional school population. Nearby residential uses are buffered from visual and noise impacts of school activities by distance and, at least during the warm-weather months, trees on the Capital Crescent Trail and Little Falls Stream Valley Park.

As discussed in detail in Part III.H., the Hearing Examiner concludes that although there is evidence of a real basis for community members' concerns about traffic, the preponderance of the evidence supports a conclusion that the proposed rezoning and development are unlikely to be incompatible with the surrounding area due to adverse impacts on traffic conditions.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

On the Hearing Examiner's reading, this element of the purpose clause does not add new requirements, but reminds the District Council of its responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested. The conclusions drawn earlier in this section govern the findings to be made here. Based on the preponderance of the evidence and for the reasons stated above, the Hearing Examiner concludes that present application is proper for the comprehensive and systematic development of the County; is capable of accomplishing the purposes of the zone; and is in substantial compliance with the Sector Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-28 Zone are summarized below, together with the grounds for the Hearing Examiner's conclusion that the proposed development would satisfy these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Sector Plan for residential development at a density of up to 28 units per acre, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the first of these criteria, which states the following:

That it contains sufficient gross area to construct 50 or more dwelling units under the density category to be granted.

The subject property contains sufficient gross area to permit the construction of 121 dwelling units.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-28 development with less than 200 units is permitted to have solely multi-family dwelling units in buildings over four stories in height, as proposed in this case. No minimum is prescribed for other types of dwelling units.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted under certain circumstances in the PD Zone but are not required. None are proposed here.

Section 59-C-7.133, Other Uses. This section contains several provisions about uses other than residential and commercial, two of which are potentially applicable to the present case.

Section 59-C-7.133(b) states as follows:

Any nonresidential, noncommercial use may be permitted at the discretion of the district council on a finding that it is compatible with the planned development and satisfies the requirements of section 59-C-7.15.

The Applicant and Technical Staff treated this section as sufficient to permit the school as part of the proposed PD-Zone development.

The Hearing Examiner observes that section 59-C-7.133(d) of the Zoning Ordinance contains other, more specific language that may be operable here:

Any special exception use in the R-90 zone, as shown in Section 59-C-1.31, may be permitted by the district council if the use meets the requirements of section 59-G-1.2 and division 59-G-2. If the use is proposed after the district council has approved the development plan . . .

A private educational institution such as the Washington Episcopal School is permitted in the R-90 Zone only by special exception. Section 59-G-1.2 contains the general conditions with which all special exceptions must comply, and division 59-G-2 contains specific standards for each category of special exception use. A special exception cannot be approved unless compliance with both the general and the specific standards is demonstrated. Under the standard statutory interpretation maxim that the specific governs the general, the intent behind Section 59-C-7.133(d) appears to be to require any use that would need a special exception in the R-90 Zone to demonstrate compliance with the special exception standards before being approved in the PD Zone. This issue was not raised either in the Staff Report or during the hearing. Accordingly, rather than decide this legal issue in a case where it was not discussed, the Hearing Examiner finds that this requirement is satisfied because the evidence demonstrates compliance with both paragraph (b) and paragraph (d).

As noted above, the school would be compatible with the planned development, and Section 59-C-7.15 would be satisfied as discussed below. The evidence regarding compatibility, traffic and master plan compliance is sufficient to conclude that all of the general special exception standards, which address compatibility, master plan compliance, proliferation of special exceptions

and adequacy of public facilities, would be satisfied. See Code § 59-G-1.21. The specific conditions for a private educational institution require that the school not constitute a nuisance; that all buildings be architecturally compatible with nearby buildings; that the school will not change the character of the surrounding residential community (which, in this case, is mixed in character); that the school not exceed 87 pupils per acre unless special findings are made (with 600 students and 11 acres of land, the Washington Episcopal School would have approximately 54 students per acre); and that all outdoor recreation areas must be located, landscaped or buffered so as not to intrude into adjacent residential properties. See Code § 59-G-2.19. The Hearing Examiner finds that for the reasons discussed in other sections of this report regarding compatibility and traffic, the present application satisfies the above requirements from section 59-G-1.21.

The specific standards also require the Board of Appeals to approve a site plan, and to make a finding that any summer camp program will not, in combination with the school's other activities, have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency or duration of activities. See Code §§ 59-G-2.19(b) and (d). The Development Plan can adequately serve the role of a site plan in this case. Information about the summer camp program submitted after the hearing indicates that the camp operates with fewer children and staff members than the number of students and staff on campus during the academic year, and this pattern is expected to continue even with an increase in enrollment. See Ex. 99. The Hearing Examiner finds this evidence sufficient to conclude that the summer camp program would not, in combination with the regular academic program, have any adverse effect on the surrounding neighborhood. If the number of people on site is smaller than during the academic year, the level of activity and traffic generation can also be expected to be lower, indicating that impacts overall would decrease during the summer months.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The Zoning Ordinance classifies the density category applied for, PD-28, as a high-density planned development zone. It is, moreover, the density recommended for the subject site in the Sector Plan, chosen to avoid the requirement for townhouses in lower density categories. The Sector Plan attempted to limit full realization of that density by recommending building height restrictions. The development now proposed would be below the maximum density for the zone, consistent with the density level the Sector Plan appeared to be targeting, and with the traffic constraints in the surrounding area. The Hearing Examiner considers the requested density category appropriate, as did the Sector Plan, because it avoids curtailing the flexibility of the zone by requiring uses other than multi-family. This density category is only appropriate, however, in the context of a development plan such as proposed here, which limits the density and intensity of use to levels below the maximum that the zone could support.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed in Part V.A.(b)(1) above, the Hearing Examiner finds that the proposed development would be compatible internally and with existing development in the surrounding area. The application also satisfies the specific setback and building height provisions, as detailed below.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no

building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The multi-family building proposed on the submitted Development Plan is within 20 feet of two property lines, but the abutting properties were recommended for light-industrial zoning in the Sector Plan. Part of the existing school building appears to be within 100 feet of the property line abutting the Capital Crescent Trail, which is not specifically recommended for any zone in the Sector Plan. The Zoning Ordinance provides that public right-of-way takes on the zoning of the least intensive adjacent zone. That could support an interpretation of the Sector Plan's zoning recommendations to recommend the least intensive adjacent zoning for the Trail right-of-way. In the area of the school building, none of the property adjacent to the Trail was recommended for single-family residential zoning, so there is no basis to attribute such a recommendation to the Trail right-of-way. Accordingly, the Development Plan would satisfy this requirement.

Section 59-C-7.16, Green Area. The PD-28 Zone requires a minimum of 50 percent green area. The Development Plan depicts green space equal to about 58 percent of the site, but that percentage is subject to adjustment at site plan. Nonetheless, the submitted plan demonstrates that the proposed development can be accomplished with sufficient green area to satisfy this requirement.

Section 59-C-7.17, Dedication of Land for Public Use. The Development Plan depicts a dedication of property along Landy Lane to provide for a cul de sac, allowing public access to a turnaround. No other dedications are proposed.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Development Plan provides for more than the required number of spaces, both in the underground parking for the multi-family building and in the surface parking areas for the school. The school also proposes to use the

tennis courts for overflow parking during special events, and has left open the possibility of constructing additional underground parking beneath the new athletic field.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed in connection with the purpose clause.

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The Hearing Examiner agrees with Technical Staff that the Development Plan proposes safe, adequate and efficient vehicular and pedestrian circulation systems and points of external access. A new loop road and a cul de sac turnaround area off of Landy Lane would provide for safe and efficient vehicular circulation through the site. A system of sidewalks and walkways marked along drive aisles would provide for safe, adequate and efficient pedestrian circulation through the site, and from the site to the Capital Crescent Trail and Little Falls Stream Valley Park.

(d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

The subject site is almost entirely graded and developed, with few natural features to preserve. Applicable forest conservation requirements would be satisfied by new landscaping along the loop road and in parking areas. While the Department of Permitting Services had not yet approved the concept stormwater management plan at the time of the hearing, the Applicant's engineer testified persuasively that stormwater management requirements would be capable of being satisfied with underground facilities and an expansion of a bio-retention facility in the northern part of

the site. The evidence suggests that stormwater management would be improved over the current condition, which was established without the benefit of today's stormwater management regulations.

- (e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.***

The Applicant has not provided any draft documents of this nature. However, the evidence supports a conclusion that the property remaining in school ownership would be controlled by the school and maintained by it in perpetuity, and that the property to be sold to a residential developer would be controlled by that developer, with appropriate provision for perpetual maintenance of common areas.

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment.

The Planning Board and Technical Staff concluded that the proposed development would substantially comply with the recommendations and objectives of the *Westbard Sector Plan*. For the reasons stated in Part V.A. above, the Hearing Examiner agrees.

As discussed in more detail in Part III.H, the preponderance of the evidence supports a conclusion that the proposed development would be unlikely to have adverse effects on traffic conditions, in light of the proposed site layout and the Applicant's commitment to create two drop-

off/pick-up areas, to use access controls to minimize cut-through traffic, and to seek approval for and contribute financially to a traffic light at River Road and Landy Lane.

Neither the proposed senior residence nor the private school expansion would have any impact on the public schools.

Having carefully weighed the totality of the evidence, the Hearing Examiner concludes that approval of the requested zoning reclassification would be in the public interest.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The submitted Development Plan is in substantial compliance with the Sector Plan.
2. The Development Plan complies with the purposes, standards, and regulations of the PD-28 Zone and provides for a form of development that will be compatible with adjacent development.
3. The Development Plan proposes internal vehicular and pedestrian circulation systems and points of external access that will be safe, adequate and efficient.
4. By its design and due to the nature of the site, the proposed development will tend to prevent erosion of the soil. No significant natural vegetation or other natural features exist on the site. The application will comply with forest conservation requirements under Chapter 22A and requirements for water resource protection under Chapter 19.
5. No documents have been submitted to show the ownership and method of perpetual maintenance of areas intended to be used for recreational or other common or quasi-public purposes, but the evidence supports a conclusion that if the development goes forward, the Applicant and the future owner of the one-acre area intended for the multi-family building will be responsible for perpetual maintenance of recreational facilities and other common areas.

B. Zoning Request

Application of the PD-28 Zone at the proposed location is proper for the comprehensive and systematic development of the County because the proposed development, as shown on the submitted Development Plan:

1. Will serve the public interest;
2. Will be in substantial compliance with the applicable sector plan; and
3. Will fully satisfy the purposes, standards and regulations of the zone.

VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-873, requesting reclassification from the R-30 and C-O Zones to the PD-28 Zone of 11.2 acres of land located at 5523 Landy Lane and 5600 Little Falls Parkway in Bethesda, Maryland, in the 7th Election District, on property identified as Lot N-103 (Parcel A, Little Falls Office Park) and Condominium Unit 1, River Road Land Condominium, be **approved** in the amount requested, subject to the specifications and requirements of the final Development Plan, Ex. 92(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council, Exhibit 92(a), within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance, and provided that the Declaration of Covenants is filed in the county land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

Dated: April 18, 2008

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner